



California Regulatory Notice Register

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JUNE 7, 2002

PROPOSED ACTION ON REGULATIONS

TITLE 13. AIR RESOURCES BOARD

Reformulated Gasoline Programs (CaRFG3)—Notice File No. Z02-0528-06..... 1053

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

Registration Services—Notice File No. Z02-0528-03 1058

TITLE 14. OFFICE OF SPILL PREVENTION AND RESPONSE

Administrative Compliance Actions and Civil Penalties—Notice File No. Z02-0528-11 1059

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

Curriculum (OB/GYN and Proctological Examinations—Notice File No. Z02-0528-10..... 1061

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

Display of License—Notice File No. Z02-0528-07..... 1062

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

Investigators; Authority to Inspect Premises—Notice File No. Z02-0528-09..... 1063

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

Person Hired By or Under Contract With the Board—Notice File No. Z02-0528-08 1065

TITLE 18. FRANCHISE TAX BOARD

Audit Procedures—Notice File No. Z02-0524-01..... 1066

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Intent to Certify Hazardous Waste Environmental Technology—Notice File No. Z02-0523-03..... 1068

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Private Site Management Performance Standards—Notice File No. Z02-0523-02 1072

GENERAL PUBLIC INTEREST

CALIFORNIA FISH AND GAME COMMISSION

Notice of Petition to List Xantus's Murrelet as a Threatened Species 1075

(Continued on next page)

*Time-
Dated
Material*

DEPARTMENT OF FISH AND GAME	
<i>Sonoma Creek Bridges Seismic Retrofit</i>	1075

DEPARTMENT OF FISH AND GAME	
<i>Whitewater Hill Wind Energy Park Expansion Project</i>	1076

DEPARTMENT OF TOXIC SUBSTANCES CONTROL	
<i>Notice of Consent Decrees regarding the Purdy Site, Mojave, California</i>	1077

RULEMAKING PETITION DECISIONS

DEPARTMENT OF CONSERVATION	
<i>Response to Petition from Scott Lamb dated April 23, 2002, Regarding the Establishment of a Commingled Rate for Reverse Vending Machines (RVMs)</i>	1077

DEPARTMENT OF CORRECTIONS	
<i>Response to Petition from Paul E. Hebbe regarding the elimination of the use of "Total Term" as Criteria for Close Custody Designation</i>	1078

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State.....	1079
Sections Filed, January 23, 2002 to May 29, 2002	1081

OAL REGULATORY DETERMINATIONS

DEPARTMENT OF CORRECTIONS [2002 OAL Determination No. 5]	
<i>Inmate Pay Schedule (Department Operations Manual Section 51120.7)</i>	1086

The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA REFORMULATED GASOLINE REGULATIONS TO POSTPONE IMPOSITION OF THE CaRFG3 STANDARDS AND THE PROHIBITION OF MTBE AND OXYGENATES OTHER THAN ETHANOL IN CALIFORNIA GASOLINE FROM DECEMBER 31, 2002 TO DECEMBER 31, 2003

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the California Reformulated Gasoline (CaRFG) Regulations. The proposed amendments would postpone the prohibition of the use of methyl tertiary butyl ether (MTBE) and other oxygenates other than ethanol in California gasoline, postpone the imposition of the CaRFG3 standards, and make other changes.

Date July 25, 2002

Time 9:00 a.m.

Place California Environmental Protection Agency
Air Resources Board
Central Valley Auditorium
1001 "I" Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. on July 25, 2002, and may continue at 8:30 a.m. on July 26, 2002. This item may not be considered until July 26, 2002. Please consult the agenda for the meeting, which will be available at least 10 days before July 25, 2002, and posted on the ARB's website, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board at (916) 322-5594, or Telecommunications Device for the Deaf (TDD)(916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area, by July 11, 2002, to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 2261, 2262, 2262.4, 2262.5, 2262.6, 2262.9, and 2266.5, 2269, 2271, 2272, and 2296 of Title 13, California Code of Regulations (CCR).

Background

The ARB administers the Phase 2 CaRFG (CaRFG2) regulations, which have applied to all California gasoline since March 1996. The regulations establish standards for the following eight gasoline properties: sulfur, benzene, olefin, aromatic hydrocarbon, and oxygen contents, the 50 percent distillation temperature, (T50), the 90 percent distillation temperature, (T90), and summertime Reid vapor pressure (RVP).

The CaRFG regulations allow refiners to use a "Predictive Model" to specify alternative formulations. The Predictive Model is a set of mathematical equations that relate emissions rates of exhaust hydrocarbons, oxides of nitrogen (NOx), and potency weighted toxics for four toxic air contaminants (benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) to the values of the eight regulated gasoline properties. An alternative gasoline formulation is acceptable if emissions of hydrocarbons, NOx, and potency-weighted toxics resulting from this formulation are no greater than emissions from gasoline having the specifications set forth in the CaRFG2 standards. Currently, most of the gasoline sold in California complies with the CaRFG2 regulations through the use of the Predictive Model.

Since 1995, most of the state's gasoline has contained about 11 percent MTBE, which, along with ethanol, is an oxygenate that is used to introduce oxygen into gasoline and to improve octane. The widespread use of MTBE has primarily resulted from two programs mandated by the federal Clean Air Act (CAA)—the federal reformulated gasoline (RFG) program administered directly by the U.S. Environmental Protection Agency (U.S. EPA), and the wintertime oxygenates program which is ultimately administered by ARB. In areas not subject to the federal RFG or the CO wintertime oxygen requirements, the Predictive Model may be used to reduce or eliminate oxygen in California gasoline.

One of the requirements for federal RFG is that it contain at least 2.0 weight % oxygen year-round in on-road vehicles in severe and extreme non-attainment areas for ozone. In 2002, the federal RFG requirements apply in San Diego County, the greater Los Angeles area (Los Angeles, Orange and Ventura Counties, and parts of Riverside and San Bernardino Counties), the greater Sacramento area (Sacramento County and parts of Yolo, Solano, Sutter, Placer, and

El Dorado Counties), and the San Joaquin Valley Air Basin. Together, these areas account for about 80 percent of the gasoline sold in California. California has asked U.S. EPA to exercise its authority to waive the minimum oxygen requirement, but in June 2001 the agency denied the state's request. A lawsuit challenging the denial is currently pending in the U.S. Court of Appeals for the Ninth Circuit.

California's wintertime oxygenates requirements have resulted from requirements in the federal CAA that states mandate the use of oxygenated gasoline during the winter in most areas that are in nonattainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). The use of oxygen in gasoline reduces emissions of CO from the existing vehicle fleet, and ambient CO concentrations are the highest in the winter. As ambient CO concentrations have declined in California as a result of fleet turnover, the ARB has been able to eliminate the winter oxygen requirement in areas where it is no longer necessary for attainment and maintenance of the NAAQS for CO. At present, the ARB requires a wintertime minimum oxygen content of 1.8 wt.% only in Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Imperial counties.

Several years ago, concerns began to increase about adverse environmental impacts from the use of MTBE in the state's gasoline. The main concern with the continued use of MTBE is the potential for contamination of California's groundwater, surface water, and drinking water systems. MTBE is very soluble in water and will transfer to groundwater faster, and will travel farther and more easily than other gasoline constituents when gasoline leaks from underground storage tanks or pipelines.

The California MTBE Public Health and Environmental Protection Act of 1997 directed the University of California (U.C.) to conduct research on the effects of MTBE. The legislation also required the Governor to take appropriate action based on the U.C. findings and information from public hearings conducted on the U.C. report. On March 25, 1999, Governor Davis signed Executive Order D-5-99, in which he found that, on balance, there is a significant risk to the environment from using MTBE in gasoline in California. The Executive Order directed the California Energy Commission (CEC) to issue a timetable for the removal of MTBE from gasoline at the earliest possible date, but not later than December 31, 2002. It also directed the ARB to adopt CaRFG3 regulations that will provide additional flexibility in lowering or removing the oxygen content requirement while maintaining current emissions and air quality benefits and ensuring compliance with the State Implementation Plan (SIP).

At a December 9, 1999, hearing, the Board approved the CaRFG3 regulations consistent with the Governor's directive and the subsequent CEC recommendation that December 31, 2002 was the earliest feasible date for a ban on MTBE. The CaRFG3 regulations prohibited California gasoline produced with MTBE starting December 31, 2002, established CaRFG3 standards applicable the same date, established a CaRFG3 Predictive Model, and made various other changes. The CaRFG3 standards modify the specifications for 5 of the 8 gasoline properties regulated by CaRFG2, with the objective of providing additional flexibility in lowering or removing the oxygen content requirement while maintaining current emissions and air quality benefits.

The CaRFG3 regulations ban gasoline produced with the use of MTBE, for all California gasoline supplied from production and import facilities starting December 31, 2002. The prohibition is phased in for most deliveries of gasoline to retail outlets occurring after February 13, 2003, and to gasoline throughout the distribution system starting March 31, 2003. The regulations also established a three-stage schedule for reducing residual MTBE levels. The regulations require that the concentration of MTBE in distributed CaRFG3 not exceed 0.3 percent, by volume, beginning December 31, 2002. This level is reduced to 0.15 percent by volume starting December 31, 2003 and 0.05 percent by volume starting December 31, 2004.

The CaRFG3 regulations also place a conditional ban, starting December 31, 2002, on the use of any oxygenate other than ethanol, as a replacement for MTBE in California gasoline. Such oxygenates may not be used to produce California gasoline unless a multimedia evaluation of the use of the oxygenate in California gasoline has been conducted, and the California Environmental Policy Council (CEPC) has determined that its use will not have a significant adverse impact on the public health or the environment.

The Proposed Amendments

Current information indicates that the timetable adopted in 2000 for removal of MTBE would not satisfy the directive of Executive Order D-5-99 that the timetable ensure adequate supply and availability of gasoline for California consumers. The results of a study commissioned by the CEC in 2001 show that phasing out MTBE from gasoline by the end of 2002 could result in a gasoline supply shortfall, which could in turn result in price levels that are 50 to 100 percent higher than normal. Further, there still exists uncertainty regarding the supply and availability of ethanol necessary to meet California's requirements.

On March 14, 2002, Governor Davis issued Executive Order D-52-02, which directed the ARB to take the necessary actions, by July 31, 2002, to postpone for one year the prohibitions of the use of MTBE and other specified oxygenates in California gasoline, and the related requirements for California Phase 3 reformulated gasoline. The Governor found that it is not possible to eliminate use of MTBE on January 1, 2003 without significantly risking disruption of the availability of gasoline in California. This would substantially increase prices, harm California's economy and impose an unjustified burden upon our motorists.

The ARB staff is proposing amendments to the CaRFG3 regulations consistent with the Governor's Executive Order D-52-02, along with a few other amendments designed to ensure that the regulations work effectively.

Prohibitions regarding MTBE and other oxygenates other than ethanol. The proposed amendments would postpone the prohibition of the use of MTBE and other oxygenates other than ethanol in California gasoline supplied by refiners and importers from December 31, 2002 to December 31, 2003, with the downstream phase-in requirements also postponed by one year. Similarly, the schedule for reducing residual levels of MTBE in CaRFG3 would be postponed one year. Starting December 31, 2003, California gasoline could not contain more than 0.30 volume percent MTBE. This residual limit of 0.15 volume percent MTBE would apply starting December 31, 2004, with the 0.05 volume percent residual limit starting December 31, 2005.

Delaying imposition of the CaRFG3 standards. The amendments would also postpone the imposition of the CaRFG3 standards for gasoline properties for one year, from December 31, 2002 to December 31, 2003. With the proposed delay in the prohibition of the MTBE prohibition, it is appropriate to allow refiners to meet the CaRFG2 standards for an additional year for producing gasoline oxygenated with MTBE. However, individual refiners importers will retain the ability to elect to have batches of gasoline subject to the CaRFG3 standards—including the prohibition of MTBE—prior to December 31, 2003.

Other amendments. Staff is proposing additional amendments to ensure that the regulations work effectively, provide additional flexibility where feasible, and correct errors. One set of amendments simplify the testing provisions for determining whether gasoline blendstock designed for blending with ethanol will comply with the CaRFG standards after it is oxygenated. Another amendment would correct errors in the assignment of RVP regulatory control periods for the North Coast Air Basin and the North Central Coast Air Basin.

COMPARABLE FEDERAL REGULATIONS

As noted above, the U.S. EPA administers the federal RFG regulations, which currently apply to about 70 percent of California's gasoline and are contained in 40 CFR §§ 80.40 and following. The federal RFG regulations do not prohibit the use of MTBE.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the environmental and economic impacts of the proposal. The report is entitled "Proposed Amendments to the California Reformulated Gasoline Regulations Postponing Imposition of the CaRFG3 Standards and the Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline From December 31, 2002 to December 31, 2003.

Copies of the Staff Report and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Environmental Resources Center, First Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (July 25, 2002).

Upon its completion, the Final Statement of Reasons (FSOR) will also be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Steven Brisby, Manager, Fuels Section, (916) 322-6019, or Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, at (916) 322-6020.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Marie Kavan, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordi-

nator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls outside the Sacramento area.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, will be available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/mtbepost/mtbepost.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Delaying the phase-out of MTBE may impact a number of parties, including business and individual purchasers of gasoline, MTBE producers, ethanol producers, and refiners and others who have made investments to comply with the CaRFG3 standards by December 31, 2002.

The decision to delay the phase-out of MTBE is primarily predicated on the concern that the use of MTBE could not be eliminated by December 31, 2002 without significantly risking the disruption of the availability of gasoline in California. Such disruptions would substantially increase gasoline prices, harm California's economy, and impose an unjustified burden on individual and business motorists. Without the additional year directed by Governor Davis, it is likely that various segments of the transportation industry would not be ready to make the transition away from MTBE, precipitating gasoline supply problems and their associated price spikes. These increases would be expected to be larger than those experienced in the past. Previous supply problems have resulted in tightness of supply but not shortages. With an actual shortage of supply, prices could be expected to increase by 50 percent or more. The benefit to individual and business motorists of avoided gasoline price spikes could be \$30 million per day for the duration of the supply problem.

If a failure to postpone the MTBE prohibition were to result in a shortfall in gasoline supplies, it is likely that independent gasoline marketers would be disproportionately impacted. Independent marketers typically purchase gasoline on the unbranded market. Unbranded wholesale fuel is the portion of refinery production that would be impacted first if there is a shortfall in the market. A one-year postponement of the phase-out of MTBE and the related CaRFG3 standards would benefit independent marketers by

allowing additional time to complete the infrastructure improvements and contingency provisions needed to ensure adequate supply and availability of gasoline after MTBE is prohibited.

California currently uses approximately 90,000 barrels per day of MTBE. Some California refiners operate small MTBE processing units that supply between 10,000 and 15,000 barrels per day of MTBE. The remaining demand is met from imports of MTBE from foreign and other domestic sources. A one-year postponement of the ban on MTBE would allow MTBE producers to continue to supply MTBE in California for up to an additional year. The amount will depend on decisions of refiners whether to continue to use MTBE to produce CaRFG or to elect to use ethanol early.

California refiners, product pipeline companies and terminal operators have completed a portion of the work necessary to accommodate the phase-out of MTBE. Delaying the phase-out of MTBE would mean that these businesses invested capital earlier than would be required, resulting in a potential delay in recovering their capital investment. This cost only applies to those companies who have completed the conversion and do not elect to phase out MTBE early. Those businesses that have not completed the conversion would experience an economic benefit from the proposed delay in the prohibition of MTBE.

Delaying the phase-out of MTBE by one year means that ethanol demand in California during 2003 may be significantly less than originally anticipated, resulting in excess capacity for ethanol producers who constructed or expanded plants in anticipation of the ban. This excess capacity may mean a temporary drop in profits during 2003 for ethanol producers, but this trend should be reversed once MTBE is phased out of use in the entire State by 2004. The size of this impact depends on whether other markets for the use of ethanol develop. Few ethanol producers are situated in California.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report (ISOR).

The Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the proposed regulatory action will affect small businesses. For the reasons discussed above, any impacts on the cost of gasoline to small businesses, and on independent oil marketers that are small businesses, are likely to be beneficial.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the reporting requirements of the CaRFG regulations which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

With regard to costs or savings necessarily incurred in reasonable compliance with the proposed amendments to the CaRFG regulations, the Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

Like businesses and individuals, state and local agencies purchase gasoline for their motor vehicle fleets. As discussed above, the proposed amendments are expected to reduce the risk of gasoline supply shortages and price spikes that could occur if the MTBE prohibition is implemented on December 31, 2002 as currently scheduled. To the extent that changes in the price of gasoline resulting from the proposed amendments are considered costs or savings to state or local agencies, those agencies would likely experience a cost savings from the amendments. Given the many variables that will affect the price of gasoline in 2003, the amount of cost savings is unquantifiable.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not

physically submitted at the hearing must be received **no later than 12:00 noon, July 24, 2002**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: to: mtbepost@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, July 24, 2002**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, July 24, 2002**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 43013, 43013.1, 43018, 43101, and 43830, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). This regulatory action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43021, 43101, 43830 and 43830.8, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could

result from the proposed regulatory action; in such event the full regulatory text with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 "I" Street, Environmental Services Center, 1st Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to amend Chapter 1, Division 1, Article 4.5, Registration Services, Sections 330.02, 330.06, 330.20, 330.32, 330.42, 330.44, 330.46, 330.48, and to repeal Section 330.54, of Title 13, California Code of Regulations.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 PM on July 22, 2002, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Ann Myrick, Department of Motor Vehicles, P O Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-8857; or amyrick@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, (916) 657-5690 or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Section 1651 of the Vehicle Code in order to implement, interpret or make specific Sections 11400, 11401, 11406, 11406.5, and 11407 of the Vehicle Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code Section 11400 prohibits any person or entity from engaging in the business of soliciting or receiving any application for the registration, renewal of registration, or transfer of registration or ownership of any vehicle of a type subject to registration under the Vehicle Code; or to transmit or present any of those documents to the department if any compensation is solicited or received for the service, without licensure by the department.

Procedures established in Sections 330.02 through 330.54 of Title 13, Chapter 1, Division 1, Article 4.5 do not go far enough to prevent fraudulent actions on the part of registration services. These proposed amendments will provide additional protection to the consumer as well as protect the validity of the department's database.

The department proposes to amend the following sections of Title 13, Chapter 1, Division 1, Article 4.5 as indicated:

Section 330.02 is amended in order to obtain additional information regarding who is authorized to approve and present registration service documents to the department.

Section 330.06 is amended to ensure compliance with Department of Justice procedures regarding fingerprinting.

Section 330.20 is amended to allow the department to ensure that authorized personnel are submitting registration work to the department for the registration service.

Section 330.32 is amended to designate DMV field offices a registration service may utilize. The specified offices would have a listing of authorized employees for registration service documents received.

Sections 330.42, 330.44, and 330.48 are amended to begin use of a form that will capture the vehicle owner and registration service owner approvals prior to submitting documents to the department.

Section 330.46 is amended to correct a typographical error in the text.

Section 330.54 is proposed to be repealed to remove language that is already covered in statute.

FISCAL IMPACT STATEMENT

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None

- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action has no effect which would have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulatory action proposed by the department clarifies procedures for licensed registration services. No studies or data were relied upon in support of this proposal.
- The adoption of this regulation will neither create nor eliminate jobs or businesses in the state of California, will not result in the elimination of existing businesses, and will neither reduce nor expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses because the regulations only amend the procedures for registration services that can easily be complied with at no additional costs.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The

contact person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials may be accessed at www.dmv.ca.gov, Other Services, Legal Affairs Division, Regulatory Notices web page.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 14. OFFICE OF SPILL PREVENTION AND RESPONSE

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to amend Sections 873 through 874.6 in Subdivision 4, Title 14 of the California Code of Regulations (CCR). These sections pertain to Administrative Compliance Actions and Civil Penalties.

PUBLIC HEARING

Pursuant to Government Code Section 11346.8(a), no public hearing has been scheduled on the proposed action. However, a hearing will be held if the OSPR receives a written request for a public hearing from any interested persons, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period. If a hearing is requested, it will be held in Sacramento.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no

later than 5:00 p.m. on July 23, 2002, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
Attention: Joy D. Lavin-Jones
Fax: (916) 324-5662
E-mail: jlavinj@ospr.dfg.ca.gov

PERMANENT ADOPTION OF REGULATIONS

OSPR may thereafter adopt the proposal substantially as described in this Notice, or may modify such proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposals—with changes clearly indicated—will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The text will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Government Code Sections 8670.67, 8670.67.5, and 8670.68 grant the Administrator of OSPR the authority to adopt regulations for the imposition and collection of administrative civil penalties and liability for specified violations of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act), enacted in 1990 by Senate Bill 2040, created a comprehensive state oil spill program for marine waters.

The Act provides the Administrator broad authority to regulate the methods utilized by industry to transport oil in or near California marine waters, and to enforce those regulations utilizing administrative, civil or criminal sanctions, in order to provide for the best achievable protection of the coastal and marine resources. Accordingly, regulations were adopted which impose civil liability and penalties.

The proposed amendments clarify that any amount of oil that enters California marine waters from an unauthorized release is grounds for a violation and possible civil action.

SMALL BUSINESS IMPACT STATEMENT

OSPR has determined that the proposed regulations may affect small businesses.

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8670.54

In accordance with Government Code Section 8574.10, these regulations have been submitted to the Review Subcommittee of the State Interagency Oil Spill Committee for review and comment; and in accordance with Government Code Section 8670.54, these regulations have been submitted to the Oil Spill Technical Advisory Committee for review and comment.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Cost impacts on representative private persons or businesses:

These amendments will not result in significant additional costs to private persons or directly affected businesses. These amendments allow an additional avenue for OSPR to pursue compliance actions.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

The OSPR has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OSPR must determine that no reasonable alternative that has been considered or that has otherwise been identified and brought to the attention of OSPR would be more effective in carrying out the

purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, forms, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from the:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

<http://www.dfg.ca.gov/Ospr/regulation/regulation.html>

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Carl Moore ((916) 327-9952), at the above address.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Four Points Sheraton, 9750 Airport Blvd., Los Angeles, CA 90045 on July 25, 2002. Written comments must be received by the Board of Chiropractic Examiners at 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931, or by fax at 916/263-5369, or by e-mail addressed to lmattthew@chiro.ca.gov no later than 5:00 p.m. on July 24, 2002, or must be received by the Board at the hearing. The Board of Chiropractic Examiners, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related

to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] and to implement, interpret or make specific Section 5 of the Chiropractic Initiative Act [Section 1000-5 of the Business and Professions Code], the Board of Chiropractic Examiners is considering changes to Division 4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 331.12.2(e), Curriculum. Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] gives the Board the responsibility for implementing regulations they deem necessary for the performance of its work in order to maintain a high standard of professional services and the protection of the public.

Currently, the regulation requires a student to complete gynecological and proctological examinations prior to graduation from a chiropractic college. This amendment will allow individuals who have not completed the required gynecological and proctological examinations prior to graduation the opportunity to do so at a Board-approved chiropractic college anytime after graduation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action will not eliminate existing business, or the expansion of businesses currently doing business, within the State of California. It will, however, provide opportunities for individuals previously barred from practice because of education shortcomings to establish business in California.

Impact on Jobs/New Businesses: The Board of Chiropractic Examiners made an initial determination that the amendment of this regulation may not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in complying with the proposed amendment.

Housing Costs: The Board has made an initial determination that the proposed regulatory action will not affect housing costs.

Small Business Impact: The proposed amendment may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board of Chiropractic Examiners must determine that no alternative which it considered or that has otherwise been identified and brought to the attention of the Board would more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Chiropractic Examiners has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

FEDERAL LAW

The proposed amendment does not duplicate or conflict with any federal law.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons and other information, if any, may be obtained at the hearing or prior to the hearing upon request from:

Board of Chiropractic Examiners
Lavella Matthews, Regulations Coordinator
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-2931

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at the above address.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, and the initial statement of reasons.

CONTACT PERSON

Inquiries concerning the proposed administrative action and inquiries regarding the substance of the proposed regulation may be addressed to Lavella Matthews at the above address or at 916/263-6465. An

alternative contact for information regarding the proposed amendment is Kim Smith at the above address or at 916/263-5355.

When prepared, copies of the final statement of reasons will be available from the contacts listed above.

INTERNET ACCESS OF DOCUMENTS

Copies of the documents referred to in this notice are available via internet at www.chiro.ca.gov.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Four Points Sheraton, 9750 Airport Blvd., Los Angeles, CA 90045 on July 25, 2002. Written comments must be received by the Board of Chiropractic Examiners at 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931, or by fax at 916/263-5369, or by e-mail addressed to lmattthew@chiro.ca.gov no later than 5:00 p.m. on July 24, 2002, or must be received by the Board at the hearing. The Board of Chiropractic Examiners, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] and to implement, interpret or make specific Section 5 of the Chiropractic Initiative Act [Section 1000-5 of the Business and Professions Code], the Board of Chiropractic Examiners is considering changes to Division 4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Revise Section 308. Display of License: Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] gives the Board the responsibility for implementing regula-

tions they deem necessary for the performance of its work in order to maintain a high standard of professional services and the protection of the public.

The existing regulation states that each person holding a license to practice chiropractic in the State of California under any and all laws administered by the board shall display the license in a conspicuous place in his or her principal office or place of practice. This proposed amendment would specifically require the display of the original license, renewal license and a current active Satellite Certificate. The regulation will alleviate any confusion as to what type of license must be displayed and where it must be displayed so as to be in plain sight for the public view.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states, since it is only directed at unlicensed individuals.

Impact on Jobs/New Businesses: The Board of Chiropractic Examiners has determined that this regulatory proposal will not affect the creation or elimination of jobs, the creation of new businesses or the elimination of existing business, or the expansion of businesses currently doing business, within the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in complying with the proposed amendment.

Housing Costs: The Board has made an initial determination that the proposed regulatory action will not affect housing costs.

Small Business Impact: The proposed amendment may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board of Chiropractic Examiners must determine that no alternative which it considered or that has otherwise been identified and brought to the attention of the Board would more effectively carry out the

purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Chiropractic Examiners has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

FEDERAL LAW

The proposed amendments do not duplicate or conflict with any federal law.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons and other information, if any, may be obtained at the hearing or prior to the hearing upon request from:

Board of Chiropractic Examiners
Lavella Matthews, Regulations Coordinator
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-4306

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at the above address.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, and the initial statement of reasons.

CONTACT PERSON

Inquiries concerning the proposed administrative action and inquiries regarding the substance of the proposed regulation may be addressed to Lavella Matthews at the above address or at 916/263-6465. An alternative contact for information regarding the proposed amendment is Kim Smith at the above address or at 916/263-5355.

When prepared, copies of the final statement of reasons will be available from the contacts listed above.

INTERNET ACCESS OF DOCUMENTS

Copies of the documents referred to in this notice are available via Internet at www.chiro.ca.gov.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments

orally or in writing relevant to the action proposed at a hearing to be held at the Four Points Sheraton, 9750 Airport Blvd., Los Angeles, CA 90045 on July 25, 2002. Written comments must be received by the Board of Chiropractic Examiners at 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931, or by fax at 916/263-5369, or by e-mail addressed to lmattthew@chiro.ca.gov no later than 5:00 p.m. on July 24, 2002, or must be received by the Board at the hearing. The Board of Chiropractic Examiners, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] and to implement, interpret or make specific Section 5 of the Chiropractic Initiative Act [Section 1000-5 of the Business and Professions Code], the Board of Chiropractic Examiners is considering changes to Division 4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Section 306.3. Investigators: Authority to Inspect Premises. Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] gives the Board the responsibility for implementing regulations they deem necessary for the performance of its work in order to maintain a high standard of professional services and the protection of the public.

Currently, there is no regulation that allows the Board's investigators the authority to inspect chiropractic offices during regular business hours. Since the Board employs its own investigators, it is necessary to provide them authority to inspect chiropractic offices during an investigation. The purpose of the investigation is to determine if the facilities are in compliance with the laws and regulations.

Presently, investigators are limited to the inspection of billing records, office equipment and procedures. This creates a problem when chiropractors are uncooperative in voluntarily providing the requested information. By adopting Section 306.3 Board inves-

tigators will have the authority to inspect chiropractic offices during regular business hours, without prior notification.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states, since it is only directed at unlicensed individuals.

Impact on Jobs/New Businesses: The Board of Chiropractic Examiners has determined that this regulatory proposal will not affect the creation or elimination of jobs, the creation of new businesses or the elimination of existing business, or the expansion of businesses currently doing business, within the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in complying with the proposed amendment.

Housing Costs: The Board has made an initial determination that the proposed regulatory action will not affect housing costs.

Small Business Impact: The proposed amendment may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board of Chiropractic Examiners must determine that no alternative which it considered or that has otherwise been identified and brought to the attention of the Board would more effectively carry out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Chiropractic Examiners has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

FEDERAL LAW

The proposed amendments do not duplicate or conflict with any federal law.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons and other information, if any, may be obtained at the hearing or prior to the hearing upon request from:

Board of Chiropractic Examiners
Lavella Matthews, Regulations Coordinator
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-4306

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at the above address.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, and the initial statement of reasons.

CONTACT PERSON

Inquiries concerning the proposed administrative action and inquiries regarding the substance of the proposed regulation may be addressed to Lavella Matthews at the above address or at 916/263-5355. An alternative contact for information regarding the proposed amendment is Cathy Hayes at the above address or at 916/263-5355.

When prepared, copies of the final statement of reasons will be available from the contacts listed above.

INTERNET ACCESS OF DOCUMENTS

Copies of the documents referred to in this notice are available via internet at www.chiro.ca.gov.

**TITLE 16. BOARD OF
CHIROPRACTIC EXAMINERS**

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Four Points Sheraton, 9750 Airport Blvd., Los Angeles, CA 90045 on July 25, 2002. Written comments must be received by the Board of Chiropractic Examiners at 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931, or by fax at 916/263-5369, or by e-mail addressed to lmattew@chiro.ca.gov no later than 5:00 p.m. on July 24, 2002, or must be received by the Board at the hearing. The Board of Chiropractic Examiners, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify

such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] and to implement, interpret or make specific Section 5 of the Chiropractic Initiative Act [Section 1000-5 of the Business and Professions Code], the Board of Chiropractic Examiners is considering changes to Division 4 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Revise Section 306.2. Person Not an Employee of the Board Hired to Provide Expertise to Board in Evaluation of Conduct of Licensee, Administration of a Board Examination; Non Liability of Board. Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] gives the Board the responsibility for implementing regulations they deem necessary for the performance of its work in order to maintain a high standard of professional services and the protection of the public.

Currently Section 306.2 provides for legal representation by the Attorney General for experts and board examiners if civil actions are filed against them. The proposed amendment will add investigators and afford them legal representation in civil actions directly resulting from any services rendered on behalf of the Board.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Any increase in cost to defend individuals represented by the Board would be absorbed by the enforcement budget.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting California businesses, includ-

ing the ability of California businesses to compete with businesses in other states, since it is only directed at unlicensed individuals.

Impact on Jobs/New Businesses: The Board of Chiropractic Examiners has determined that this regulatory proposal will not affect the creation or elimination of jobs, the creation of new businesses or the elimination of existing business, or the expansion of businesses currently doing business, within the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in complying with the proposed amendment.

Housing Costs: The Board has made an initial determination that the proposed regulatory action will not affect housing costs.

Small Business Impact: The proposed amendment may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board of Chiropractic Examiners must determine that no alternative which it considered or that has otherwise been identified and brought to the attention of the Board would more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Chiropractic Examiners has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

FEDERAL LAW

The proposed amendments do not duplicate or conflict with any federal law.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons and other information, if any, may be obtained at the hearing or prior to the hearing upon request from:

Board of Chiropractic Examiners
Lavella Matthews, Regulations Coordinator
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-4306

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at the above address.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, and the initial statement of reasons.

CONTACT PERSON

Inquiries concerning the proposed administrative action and inquiries regarding the substance of the proposed regulation may be addressed to Lavella Matthews at the above address or at 916/263-5355. An alternative contact for information regarding the proposed amendment is Cathy Hayes at the above address or at 916/263-5355.

When prepared, copies of the final statement of reasons will be available from the contacts listed above.

INTERNET ACCESS OF DOCUMENTS

Copies of the documents referred to in this notice are available via internet at www.chiro.ca.gov.

TITLE 18. FRANCHISE TAX BOARD

As required by Government Code section 11346.4, this is notice that a public hearing has been scheduled to be held at 10:00 a.m., on August 19, 2002, at 9645 Butterfield Way, Sacramento, California, to consider the adoption of California Code of Regulations, title 18, proposed section 19032. Proposed California Code of Regulations, title 18, section 19032 is intended to provide clarification and guidance to the taxpayer community and audit staff concerning common audit practices and procedures utilized during the audit process, thus, providing a resource that can be used to prepare for and use during an audit. An employee of the Franchise Tax Board will conduct the hearing, and a report will be submitted to the three-member Franchise Tax Board for its consideration, along with a recommendation as to whether the three-member Board should hold a hearing on the proposed regulatory action. Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action, if any person makes such a request in writing. If a written request is received, the three-member Franchise Tax Board will consider the proposed regulatory action prior to adoption.

Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., August 19, 2002. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

AUTHORITY AND REFERENCE

Revenue and Taxation Code section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with section 17001), Part 10.2 (commencing with section 18401), Part 10.7 (commencing with section 21001), and Part 11 (commencing with section 23001). The proposed regulatory action interprets, implements, and makes specific Revenue and Taxation Code section 19032.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Revenue and Taxation Code section 19032 allows the Franchise Tax Board the ability to examine a taxpayer's return as soon as practicable after filed, and to determine that the correct amount of tax has been reported on the return as filed.

Proposed California Code of Regulations, title 18, section 19032 discusses expectations for the length of the audit, the responsibilities of the parties involved in the audit, and a description of common practices and procedures utilized during the audit process.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost to directly affected private persons/businesses potential: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: None. The regulation affects small businesses in the same manner as it affects individuals and other businesses.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Franchise Tax Board must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Franchise Tax Board has prepared an initial statement of the reasons for the proposed regulatory action. The express terms of the proposed regulatory action, the initial statement of the reasons for the regulatory action, and all the information upon which the proposed regulatory action is based are available upon request from the agency officer named below. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website at <http://www.ftb.ca.gov>.

CHANGE OR MODIFICATION OF ACTIONS

The Franchise Tax Board may adopt the proposed regulatory action after consideration of any comments received during the comment period. Government Code section 15702, subdivision (b), provides for consideration by the three-member Board of any proposed regulatory action, if any person makes such a request in writing. If a written request is received, the three-member Franchise Tax Board will consider the proposed regulatory action prior to adoption.

The regulations and amendments may also be adopted with modifications if the changes are nonsubstantive or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulations as modified could result from that originally proposed. The text of the regulations as modified will be made available to the public at least 15 days prior to the date on which the regulations are adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing, who is in need of a language interpreter,

including sign language should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: colleen.berwick@ftb.ca.gov, or the designated backup, Doug Powers; Tel.: (916) 845-4962; Fax: (916) 845-3648; E-Mail: doug.powers@ftb.ca.gov. In addition, all questions on the substance of the proposed regulation can be directed to Jeannie Harriman: Tel. (916) 845-6431. This notice, the initial statement of reasons and the express terms of the regulation are also available at the Franchise Tax Board's website at www.ftb.ca.gov.

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Notice of Intent to Certify

Hazardous Waste Environmental Technology

The California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control (DTSC) intends to certify the following company's hazardous waste environmental technology:

Applicant: Hydromatix Corporation
10450 Pioneer Boulevard, Building 3
Santa Fe Springs, California 90670
Technology: Hydromatix 786E Ion Exchange
Rinsewater Recycling System

Section 25200.1.5 of the Health and Safety Code enacted by Assembly Bill 2060 (1993) authorizes DTSC to certify the performance of hazardous waste environmental technologies. The purpose of the certification program is to provide an in-depth, independent review of technologies to facilitate regulatory and end-user acceptance. Only technologies that are determined to not pose a significant potential hazard to the public health and safety or to the environment when used under specified operating conditions may be certified.

DTSC makes no express or implied warranties as to the performance of the manufacturer's product or equipment. The end-user is solely responsible for complying with the applicable federal, state, and local regulatory requirements. Certification does not limit DTSC's authority to take any action necessary for protection of public health and the environment.

By accepting certification, the manufacturer assumes, for the duration of certification, responsibility for maintaining the quality of the manufactured equipment and materials at a level equal to or better

than was provided to obtain certification and agrees to be subject to quality monitoring by DTSC as required by the statute under which certification is granted.

DTSC's proposed decision to certify is subject to public review and comment. Written comments must be received by DTSC no later than 30 days after publication of this notice. All comments will be considered and appropriate changes will be made prior to publishing DTSC's final decision.

Additional information supporting DTSC's proposed decision can be found in the January 2002 Cal/EPA report entitled *Environmental Technology Verification Report Hydromatix 786E Ion Exchange Rinsewater Recycling System*. To obtain a copy of the report, or to submit comments on the proposed certification, contact:

California Environmental Protection Agency
Department of Toxic Substances Control
Office of Pollution Prevention and
Technology Development
P.O. Box 806 1001
I Street, 12th Floor
Sacramento, California 95812-0806
Attn.: Mr. Edward Benelli (916) 445-2959

A description of the technology to be certified, the proposed certification statement, and the certification conditions and limitations for the technology of the company listed above follows. DTSC emphasizes that this is a proposed certification for public comment, and not the final certification.

30-DAY PUBLIC NOTICE CERTIFICATION PROGRAM (AB 2060) FOR HAZARDOUS WASTE ENVIRONMENTAL TECHNOLOGIES

PROPOSED TECHNOLOGY CERTIFICATION Hydromatix 786E Ion Exchange Rinsewater Recycling System

Technology: Hydromatix 786E Ion Exchange Rinsewater Recycling System

Manufacturer: Hydromatix Corporation
10450 Pioneer Boulevard Building 3
Santa Fe Springs, California 90670

Background

Metal Products and Machinery (MP&M) industries generate rinse wastewaters containing metals and their salts during electroplating, etching, anodizing, and stripping operations. Rinse wastewaters originating from MP&M industries often characterize as hazardous wastes due to their toxicity and corrosivity.

One method of treating MP&M rinse wastewaters uses ion exchange resins to remove both the metals and their salts, yielding a product deionized (DI) water that can be reused in rinsing operations. The metals and their salts are removed in separate columns which contain the cationic and anionic exchange resins.

Ultimately, the ion exchange capacity is exhausted, and the resins must be regenerated by removing the accumulated cations and anions.

Hydromatix Corporation (Santa Fe Springs, California) developed its 786E Ion Exchange Rinsewater Recycling System to remove metals and their salts from rinse wastewaters generated by MP&M industries.

Technology Description

Background

The Hydromatix 786E system features packed bed, counter-current ion exchange columns with conductivity meters, programmable logic controllers (PLC), and automatic valves to manage the treatment and regeneration processes. The 786E system uses two pairs of cation and anion exchange columns to enable continuous operation; one pair operates while the other is being regenerated or is in standby. The cation exchange resin is regenerated by acidic solution, and the anion exchange resin is regenerated by basic solution.

Regenerant wastewater is formed when the acidic and basic solutions are discarded at the conclusion of the regeneration cycle. The regenerant wastewater comprises a smaller, more concentrated volume than the original rinse wastewater treated. The Hydromatix system reduces the volume of regenerant wastewater by recycling portions of the water rinses used in regeneration. Portions of the water rinses used in regeneration are re-used as make-up solutions for the next regeneration cycle, and other water rinses are returned to the feed tank rather than to waste. Raw chemical usage is also minimized by reusing portions of the acid and base regenerant solutions.

Treatment

Contaminants such as oils, grease, and oxidizing agents are kept out of the rinse wastewater entering the 786E system by segregating the various wastestreams generated from plating operations, and by passing the rinse wastewater through a carbon filter to remove any organic compounds that may be present.

The 786E system uses Purolite (PuroliteUSA, Bala Cynwyd, Pennsylvania) PFC-100 H strong acid cationic exchange resin, which features a sulfonic acid functional group with a total exchange capacity of 1.9 equivalents per liter (eq/L). The anionic exchange resin used is Purolite PFA-300 OH strong base type II, featuring a quaternary ammonium functional group, with a total exchange capacity of 1.4 eq/L.

DI water production continues until the resin capacity is exceeded; a conductivity sensor detects the ionic contamination resulting from resin exhaustion. The volume of rinse wastewater treated per run is dependant on the concentration of metals and their

salts in the rinse wastewater with higher concentrations resulting in earlier exhaustion of the resin material.

Regeneration

The 786E system performs regeneration cycles for the cation column first, followed by regeneration of the anion column. The system uses upflow service, and downflow regeneration, in a counter-current flow system. High quality product DI water is obtained in counter-current flow systems because the treated water passes through the most highly regenerated portion of the resin bed immediately before it exits the column.

Evaluation Approach

The Hydromatix 786E system evaluation required measurements of treatment volumes, generated wastes, a calculation of a mass balance, and a determination of the regenerated resin capacity. Hydromatix 786E system diagrams and documents were reviewed to determine the placement of monitoring and sampling equipment. Aero-Electric Connectors, Incorporated (AEC, Torrance, California) was selected to be the host facility for the 786E system evaluation. Five test runs lasting approximately one week each were conducted over a three month period at AEC.

DTSC personnel specified and supervised the installation of monitoring and sampling equipment on the Hydromatix 786E system at AEC. The monitoring equipment allowed flow monitoring of the feed rinse wastewater, product DI water, regenerant solutions, and regenerant wastewater during actual production operations. The sampling equipment allowed for sample collection from the feed rinse wastewater, product DI water, and regenerant waste streams.

Arrangements were made to have independent chemical analysis of the samples collected from the 786E system at AEC. An ion exchange resin sampling method was devised, and arrangements were made for analysis at the manufacturer's laboratory to determine the resin capacities used and restored. Provisions for quality control and data evaluation were implemented. Data compilation and evaluation methods were developed, and a peer review team was established.

Basis for Certification

Results of Verification Activities

The *Environmental Technology Verification Report* documented the Hydromatix 786E Ion Exchange Rinsewater Recycling System evaluation by DTSC at Aero-Electric Connectors in Spring 2001. DTSC was able to determine the regenerant waste specific volume and cation and anion exchange capacities. Secondary objectives including the collection of information for potential end-users and metal reclaimers, and observing worker health and safety conditions during normal

operation of the system, were also achieved. All data resulting from the verification activities was submitted to a peer review team. The collected data and supporting information were sufficient to verify the technology and issue the Certification Statement.

Regenerant Waste Volume Produced

The regenerant waste volume produced was measured with inline flow sensors and totalizers during each test run. The cationic regenerant waste produced averaged 302 gallons (gal) for 18 cubic feet (ft³) of resin, yielding a specific volume of 16.8 ± 0.2 gal/ft³. The anionic regenerant waste produced averaged 313 gal for 18 ft³ of resin, yielding a specific volume of 17.4 ± 0.1 gal/ft³. Therefore, the regenerant waste volumes produced averaged 17.1 ± 0.2 gal/ft³ resin.

Cation and Anion Exchange Capacities Restored

Direct sampling of the cation and anion resins was used to determine the exchange capacities restored during regeneration and the total exchange capacities remaining. Cation and anion capacities restored were 94.5 ± 6.8 and 88.7 ± 1.7 percent over five test runs, respectively. Compared to new resin material, the remaining cationic resin capacity averaged 96.0 ± 2.1 percent, and the remaining anionic resin capacity averaged 79.9 ± 1.8 percent. For the cation resin, the resin utilization was found to be 46.6 ± 4.6 percent using three test runs, and the regenerant efficiency was 29.9 ± 28.8 percent using two test runs. For the anion resin, the resin utilization was found to be 57.2 ± 36.5 percent over two test runs, while the regenerant efficiency was 32.0 ± 3.7 percent using two test runs.

Rinse Wastewater Volume Treated

The volume of rinse wastewater treated was measured with an inline flow sensor and totalizer. Based in the five test runs, the rinse wastewater volume treated averaged $75,565 \pm 9,663$ gallons. The first three runs were each approximately 66,100 gallons; the last two just under 90,000 gallons.

Masses of Acid and Base Consumed

The masses and volumes of acid and base used per regeneration were determined by measuring the volumes of acid and base solutions applied to the columns during each test run. These volumes were combined with analysis of those solutions for concentration to determine the masses used. The flows from the acid and base tanks were measured with an inline flow sensor and recording totalizer. Each of the five values for acid and base regenerant volumes recorded at AEC were usable. The acid volume averaged 271 ± 11.6 gallons, ranging from 260 to 299. The base volume averaged 274.4 ± 6.5 gallons, with a range of 260 to 281. The mass was calculated using the average of the five volumes recorded, and the two concentra-

tions which were acceptable, those from runs four and five. The average for acid volume of 271 gallons and concentration of 87,500 mg/L as CaCO₃ yielded a mass of 144.3 lbs HCl, which corresponds to 38.9 gallons of concentrated HCl solution (37 percent weight to volume, w/v). Thus, each regeneration cycle for the cationic column was found to require slightly less than 40 gallons of concentrated HCl. As described above, a portion of the acidic regenerant solution was reused from the previous regeneration cycle, but that fraction was not determined in this study.

Each of the volume measurements, and each of the quality assurance (QA) samples associated with the base regenerant study were usable, therefore the reported data is an average of all five test runs. The average base regenerant used was 274.4 ± 6.5 gallons. The average base concentration was 65,400 mg/L as CaCO₃, which yields an average mass of 119.7 pounds NaOH. This corresponds to 18.7 gallons of concentrated NaOH solution (50 percent w/v) used per anionic column regeneration. As with the acidic regenerant, a portion of the basic regenerant solution was reused from the previous regeneration cycle, but that fraction was not determined in this study.

Masses of Metal Species in the Regenerant Waste

The concentrations of cations in the regenerant waste were determined for mass balance calculations and to provide information for potential end-users and metal reclaimers. The concentrations were used with regenerant waste volume measurements to calculate the masses of metal species in the regenerant waste. The average and range for the masses of the representative metal species copper, nickel, and zinc were determined.

Each of the five test runs provided usable concentration data for metals, and all but test run two yielded usable data for waste volumes. The average masses and ranges were found to be 113.8 ± 89.7 g and 24.9 to 272.5 g for copper, 175.3 ± 70.5 g and 47.5 to 227.9 g for nickel, and 580.8 ± 411.5 g and 65.6 to 1,078.7 g for zinc.

Product DI Water Quality

As measured by ATL, the electrical conductivity (EC) of the DI water averaged 36 microSiemens per centimeter (μS/cm) at the end of a run, with extreme values of 13 and 78 μS/cm noted. The EC values reported on the control panel often exceeded 100 μS/cm at the end of a run. Other water quality indicators measured included pH averaging 4.5, TDS averaging 36 mg/L, and non-detectable alkalinity.

Worker Health and Safety

Onsite observations at AEC, end-user interviews, and reviews of Hydromatix documentation were used to assess the risks posed to worker health and safety

posed by the 786E system. These observations and inquiries indicate that accidental releases due to the failure of piping, valves, or pumps, appear to be unlikely. Routine contact with the system should not result in worker exposure because the waste and regeneration solutions are entirely contained within sealed pipes. Routine maintenance operations such as filter cartridge removal and acid and base concentrate replenishment may involve contact with hazardous solutions and could therefore pose a risk. Non-routine operations such as resin and carbon change-outs would similarly involve hazardous conditions. However, the risk from exposure can be minimized by operators following established operating procedures including adherence to an adequate health and safety plan.

End-User Data Collection

DTSC staff had contacted several Hydromatix end-users and conducted phone surveys. Questions on the following subjects were asked: system information, process information, volume of regenerant, waste generation/management, system performance, reliability, and user health and safety. The purpose of the phone surveys was to provide supportive information to the evaluation of this technology and to develop a database of information from which to select end-users for on-site visits. Three end-user questionnaires were ultimately completed.

Certification Statement

Under the authority of Health and Safety Code section 25200.1.5, the Hydromatix 786E Ion Exchange Rinsewater Recycling System is hereby certified as a pollution prevention technology subject to the specific conditions including the limitations/disclaimer set forth in the Certification Notice as published in the California Regulatory Notice Register on [month, day, year], Register No. [xx], Volume No. [xx-Z], pages [xxxx-xxxx]. The Hydromatix 786E Ion Exchange System is capable of treating MP&M wastewaters within the following performance parameters:

Performance results of the Hydromatix System are as follows (all data calculated at the 90 percent confidence level):

Regenerant waste specific volume: 17.1 ± 0.2 gallons of waste per cubic foot of resin (gal/ft^3). The cationic regenerant waste produced during four test runs averaged 302 gallons for 18 ft^3 of resin, yielding a specific volume of 16.8 ± 0.2 (gal/ft^3). The anionic regenerant waste produced during five test runs averaged 313 gallons for 18 ft^3 of resin, yielding a specific volume of 17.4 ± 0.1 gal/ft^3 .

Cation and anion exchange capacities restored: Cation and anion capacities restored were 94.5 ± 6.8 and 88.7 ± 1.7 percent over five test runs,

respectively. Compared to new resin material, the remaining cationic resin capacity averaged 96.0 ± 2.1 percent, and the remaining anionic resin capacity averaged 79.9 ± 1.8 percent. For the cation resin, the resin utilization was found to be 46.6 ± 4.6 percent using three test runs, and the regenerant efficiency was 29.9 ± 28.8 percent using two test runs. For the anion resin, the resin utilization was found to be 57.2 ± 36.5 percent over two test runs, while the regenerant efficiency was 32.0 ± 3.7 percent using two test runs.

Rinse wastewater volume treated: $75,565 \pm 9,663$ gallons average, measured over five test runs, containing typical cations and anions found in plating shop wastestreams.

Masses of acid and base consumed: 144.3 pounds of HCl measured over two test runs, and 119.7 pounds of NaOH per regeneration cycle measured over five test runs. The regenerant solution volumes were 271 ± 11.6 gallons of acid, and 274.4 ± 6.5 gallons of base, each measured over five test runs. The volumes of concentrated acid and base in the regenerant solution volumes were 38.9 gallons of 37 percent HCl, and 18.7 gallons of 50 percent NaOH.

The masses of metal species in the regenerant waste: The average masses and ranges of representative metal species were found to be: 113.8 ± 89.7 g with a range of 24.9 to 272.5 g for copper, 175.3 ± 70.5 g and 47.5 to 227.9 g for nickel, and 580.8 ± 411.5 g and 65.6 to 1,078.7 g for zinc. Metal species were determined using four test runs.

Limitations of Certification

DTSC makes no express or implied warranties as to the performance of the Hydromatix 786E Ion Exchange Rinsewater Recycling System. Nor does DTSC warrant that the Hydromatix System is free from any defects in workmanship or materials caused by negligence, misuse, accident or other causes. However, DTSC believes that the Hydromatix 786E Ion Exchange Rinsewater Recycling System can be used in accordance with the conditions specified in this certification notice to achieve the results specified herein.

Use of the certified technology is limited to the ion exchange treatment of waste rinsewaters as tested. Use of the certified technology must comply with the conditions in the following section.

Specific Conditions

This certification is limited to use of the Hydromatix 786E System for treatment of waste rinsewater of similar composition to that tested as follows:

1. Wastewater stream of similar composition and concentration;

2. Cationic and anionic resin beds of Purolite PFC-100 H and PFA-300 OH ion exchange resins;
3. Flow rates to columns of the ranges experienced in the tests;
4. Regeneration cycle: regenerant chemicals used shall be the same as those experienced during the tests.
5. Acid and base regenerant concentrations, flow rates, and volumes in the ranges of those used in the tests.

This certification is also limited to use of the Hydromatix 786E System under the following conditions:

6. Compliance with Worker Health and Safety Laws. Operation of the Hydromatix system must be in compliance with all federal, state and local regulations relating to the protection of worker health and safety. In California these include, but are not limited to, Cal-OSHA and OSHA requirements.
7. Personnel Training. Operators with chemical wastewater treatment knowledge and proper training are required to use this technology. Training includes safe operation and maintenance of the various components of the Hydromatix 786E Ion Exchange Rinsewater Recycling System, e.g. control panel and system operation, and equipment including valves, pumps, piping, tanks for rinsewater, regenerant waste, and acid and base solutions.
8. Compliance with Applicable Federal, State, Local Regulations. The user shall comply with all applicable federal, state, and local regulatory requirements.
9. Modifications and Amendments at the Request of the Applicant. Modifications and amendments to this certification may be requested by the applicant and will be subject to approval by DTSC.
10. Certification Reference. The holder of a valid hazardous waste environmental technology certification is authorized to use the certification seal (California Registered Service Mark Number 046720) and shall cite the certification number and date of issuance in conjunction with the certification seal whenever it is used. When providing information on the certification to the user of the technology or another interested party, the holder of a hazardous waste environmental technology certification shall at a minimum provide the full text of the final certification decision as published in the California Regulatory Notice Register.

11. The user of the certified technology shall maintain adequate records to document compliance with the conditions of certification. The records shall be maintained onsite and available for inspection.

Regulatory Implications

This certification is for the specific claims, conditions, and limitations outlined in this notice, and is based on DTSC's evaluation of the technology's performance. The Certification does not change the regulatory status of Hydromatix 786E Ion Exchange Rinsewater Recycling System; it should, however, facilitate and encourage the acceptance of this technology as a pollution prevention alternative to traditional waste water treatment methods and techniques.

Use of this technology may be subject to regulation by federal, state, and local agencies. For each specific application, the end-user must ensure compliance with all applicable regulations and standards established by federal, state, and local agencies.

This Certification is issued under the California Environmental Technology Certification Program, and is therefore subject to the conditions set out in the regulations, such as the duration of the Certification, the continued monitoring and oversight requirements, and the procedures for certification amendments, including decertification.

By accepting this Certification, the manufacturer assumes, for the duration of the Certification, responsibility for maintaining the quality of the manufactured materials and equipment at a level equal or better than was provided to obtain this Certification and agrees to be subject to quality monitoring by DTSC as required by the law, under which this Certification is granted.

Duration of Certification

This certification will remain in effect for three years from the date of issuance, unless it is amended or revoked for cause.

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

PRIVATE SITE MANAGEMENT PERFORMANCE STANDARDS

Department Reference Number: R-96-01

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend title 22, division 4.5, chapter 51 of the California Code of Regulations, adding sections 69000 through 69013. These regulations would establish performance standards for private site managers and private site management team members pursuant to DTSC's private site management program. These regulations conform to the statutory provision for

establishing performance standards for private site managers, who must be Registered Environmental Assessors Class II (REA IIs) with the Office of Environmental Health Hazard Assessment (OEHHA).

The Private Site Management Program is a voluntary program created by Assembly Bill No. 1876 (Stats. 1995, ch. 820). This program is designed to allow the private sector to select a private site manager, to have limited State involvement at a low-threat hazardous substance release site, and to obtain a State designation that no further action is required or a State certification that the site has been remediated.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on **July 22, 2002**, in the Sierra Hearing Room, 2nd Floor, 1001 "I" Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on **July 22, 2002** will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded the opportunity after the registered persons have been heard.

AUTHORITY AND REFERENCE

DTSC proposes to add sections 69000 through 69013 to title 22, division 4.5, chapter 51, California Code of Regulations, pursuant to the authority in sections 25351.5 and 25395.15 of the Health and Safety Code. The proposed regulations would implement, interpret, or make specific sections 25395.1 through 25395.15 of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking affects title 22, division 4.5, chapter 51, California Code of Regulations, by adding new sections 69000 through 69013. These proposed regulations would establish minimum performance standards for private site managers and members of private site management teams who would be authorized to conduct site investigations and removal and remedial actions at low-threat hazardous substance release sites with limited oversight by DTSC. The investigations would have to be performed in accor-

dance with the Preliminary Endangerment Assessment Guidance Manual adopted by DTSC in January 1994, and reprinted with minor changes in June 1999, which is incorporated by reference.

Prior to the creation of the Private Site Management Program (Stats. 1995, ch. 820), the private sector frequently conducted site cleanups of low-threat sites without any governmental oversight. The project proponents (property owners, responsible parties, and prospective purchasers) then found that financial institutions were often reluctant to either finance redevelopment efforts or make loans using these properties as collateral. The Private Site Management Program is a voluntary program designed to allow the private sector to select a private site manager, to streamline the level of State involvement at a low-threat hazardous substance release site, and obtain a State designation that no further action is required or a State certification that the site has been fully remediated. DTSC is responsible for developing performance standards to ensure that site cleanups conducted by private site managers are protective of public health and the environment.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

BUSINESS REPORT

DTSC has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c).

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: These regulations may impact local governments to the extent that they need to remediate a low-threat hazardous substance release site. If such a situation existed, the local government could elect to hire a private site manager and participate in the Private Site Management Program. It is assumed that local governments

may elect to participate in the program if it is cost-effective or if it provides an economic benefit, e.g., State certification.

Cost or Savings to Any State Agency: If the volume of Private Site Management Program projects is large, DTSC may need to request additional reimbursement positions to have sufficient staff and authority to oversee Private Site Management Program projects.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on federal revenue or costs.

Effect on Housing Costs: DTSC has made an initial determination that there will be no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses: DTSC is not aware of any cost impacts that a representative private person or business would incur in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses: DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

(A) Creation or elimination of jobs within California—DTSC has made a preliminary determination that this program may promote job opportunities if businesses opt to use this voluntary program. No jobs will be eliminated in California as a result of the proposed regulations.

(B) Creation of new businesses or elimination of existing businesses within California—DTSC has made a preliminary determination that this program may promote the development of new businesses if the environmental consulting industry views the program as a business opportunity. No businesses will be eliminated in California as a result of the proposed regulations.

(C) Expansion of businesses currently doing business in California—DTSC has made a preliminary determination that this program may expand environmental consulting businesses if this industry views the Private Site Management Program as a business opportunity as a result of the proposed regulations.

Effect on Small Businesses: DTSC has determined that provisions of this rulemaking may have an effect on small businesses.

CONSIDERATION OF ALTERNATIVES

DTSC has determined that no reasonable alternative is considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC, Environmental Analysis and Regulations Section as specified below. The information upon which DTSC relied is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once DTSC decides to adopt a regulation, DTSC prepares a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Once prepared, copies of the Final Statement of Reasons may be obtained from Ms. Joan Ferber at the address listed below.

A copy of the Final Statement of Reasons will also be posted on DTSC's web site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquires regarding technical aspects of the proposed regulations or CEQA documents may be directed to Kathleen Hartshorne of DTSC at (916) 323-3395 or, if unavailable, Laurie Grouard of DTSC at (916) 323-3394. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments, or contentions regarding rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in

writing at the public hearing in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations. To be included in the mailing list for this regulation package and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail, or fax to:

Ms. Joan Ferber, Regulations Coordinator
Environmental Analysis and Regulations Section
Department of Toxic Substances Control

Mailing Address: P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: regs@dtsc.ca.gov

Fax Number: (916) 323-3215

Ms. Ferber's phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.

GENERAL PUBLIC INTEREST

CALIFORNIA FISH AND GAME COMMISSION

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission, on April 16, 2002, received a petition from Dr. Lisa Ballance, Chair, Pacific Seabird Group, to list Xantus's Murrelet (*Synthliboramphus hypoleucus*) as a threatened species. The Xantus's Murrelet occurs only along the west coast of North America. Xantus's Murrelets spend a majority of their lives at sea and come to shore only for a few months per year to breed. Two subspecies are recognized. *S. h. scrippsi* breeds from the northern California Channel Islands (off Southern California) south to the San Benito Islands, Baja California Sur, Mexico; and *S. h. hypoleucus* breeds primarily at Guadalupe Island and the San Benito Islands off Baja California. Following breeding, birds disperse northward and offshore, reaching as far north as northern British Columbia, Canada.

Pursuant to Section 2073 of the Fish and Game Code, on April 24, 2002, the Commission transmitted the petition to the Department of Fish and Game for review pursuant to Section 2073.5 of said code. On May 10, 2002, pursuant to Section 2073.5 of said code, the Department requested a 30-day extension of time to complete its evaluation of the petition. The

Department's evaluation and recommendation relating to the petition will be received and discussed by the Commission at its October 24, 2002, meeting in Crescent City. Interested parties may contact Ms. Sandra Morey, Chief, Habitat Conservation Planning Branch, Department of Fish and Game, at telephone (916) 653-4875 for information on the petition or to submit information to the Department relating to the petitioned species.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

CESA NO. 2080-2002-012-03

PROJECT: Sonoma Creek Bridges Seismic
Retrofit

LOCATION: Sonoma, Sonoma County, California

NOTIFIER: County of Sonoma

BACKGROUND

On March 7, 2002 the U.S. Fish and Wildlife Service (Service) issued Biological Opinion No. 1-I-00-F-240 for the Watmaugh Road Bridge Seismic Retrofit and Biological Opinion No. 1-I-00-F-200 for the Riverside Avenue Bridge Replacement project, both on Sonoma Creek in Sonoma County. These Biological Opinions described the project actions and set forth measures to mitigate impacts to the California freshwater shrimp (*Syncaris pacifica*) and its habitat. The California freshwater shrimp is listed as an endangered species under the California Endangered Species Act, Fish and Game Code sections 2050 et seq. (CESA). On April 24, 2002, the Director of the Department of Fish and Game (Department) received a notice from Ms. Paula Stamp, seeking a determination on behalf of the County of Sonoma, pursuant to Section 2080.1, that the Federal Biological Opinions are consistent with CESA.

The proposed project at Watmaugh Road is a seismic retrofit of an existing steel truss bridge. Construction activities will include: 1) enlarging the pier footing at Pier 2 by pouring concrete in a constructed form; 2) removing rock slope protection on the bank adjacent to Pier 2 to allow footing construction and replacing the rock slope protection upon completing the pier footing; 3) isolating the work site during construction with gravel diversion dams and diverting the flow of the stream into culverts approximately 120 feet long; and 4) building a temporary access road on the east side of the stream and south of Watmaugh Road.

The proposed project at Riverside Drive is a replacement of an existing multi-span concrete bridge. Construction activities will include: 1) constructing

two access roads, one on each bank downstream of the bridge; 2) constructing a temporary work pad along approximately 200 feet of channel bottom and diverting the flow of Sonoma Creek under the work pad through culverts; 3) demolishing the existing bridge; 4) cutting and removing the two existing piers approximately 4 feet below grade; and 5) constructing the new bridge in-place from the temporary work pad.

DETERMINATION

The Department has determined that the federal Biological Opinions (Nos. 1-1-00-F-240 and 1-1-00-F-200) are consistent with CESA because the projects and mitigation measures meet the conditions set forth in Fish and Game Code section 2080, subdivisions (b) and (c) for authorization of incidental take of species protected under CESA. Important to the Department's findings are several measures from the Biological Opinions that address expected or potential impacts to the California freshwater shrimp. These measures include, but are not limited to, the following:

1. Work in the stream channel shall only occur from June 15 through October 15.
2. Channel access shall be chosen to minimize impacts to stream banks and riparian vegetation.
3. To replace pool habitat for fish and shrimp, a complex vegetated bank structure will recreate environmental conditions similar to pre-project conditions with stable undercut banks and overhanging vegetation.
4. After constructing the diversion dam, a qualified biologist shall rescue freshwater shrimp from between the diversion dams and relocate the shrimp immediately to suitable habitat in Sonoma Creek near the project site.
5. Upon project completion, the portions of the gravel work pads and diversion dams below water level shall be left in place and notched to facilitate wash-out during winter storms. Any earth cap or contaminated surface materials from the work pad shall be removed from the stream channel.

Pursuant to Section 2080.1 of the Fish and Game Code, incidental take authorization under CESA will not be required for incidental take of the California freshwater shrimp. Any substantive changes to the projects as described in the Biological Opinions, including changes to the mitigation measures, will require the notifier to obtain a new consistency determination or a CESA incidental take permit from the Department.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 CESA NO. 2080-2002-013-06

Project: Whitewater Hill Wind Energy Park

Location: Riverside County, California

Applicant: Whitewater Hill Wind Partners, LLC

BACKGROUND

On 26 September 2001, the U.S. Fish and Wildlife Service (Service) issued Biological Opinion FWS-ERIV-2057.2 for the Whitewater Hill Wind Energy Park Expansion Project, describing the project actions and setting forth measures to mitigate impacts to the desert tortoise (*Gopherus agassizii*) and its habitat. This species is listed under the California Endangered Species Act, Fish and Game Code Sections 2050 et seq (CESA). On 6 May 2002, the Director of the Department of Fish and Game (Department) received a notice from Gary S. Hardke, seeking a determination on behalf of the project, pursuant to Section 2080.1, that the Federal Biological Opinion is consistent with CESA.

The proposed project consists of 45 wind turbine generators, an underground power transmission system, access roads, expansion of an existing electrical substation, permanent access roads, security fencing, and temporary construction roads and construction pads. The proposed project site is located about 3.5 miles east of the community of Cabazon and approximately 0.5 miles northwest of Interstate 10 and Highway 62. The construction will disturb 21.5 acres of desert tortoise habitat.

DETERMINATIONS

The Department has determined that the Federal Biological Opinion FWS-ERIV-2057.2 is consistent with CESA because the project and measures described in that Opinion meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of species protected under CESA. The Biological Opinion's measures to mitigate project impacts to the desert tortoise include: 1) the compensation for the loss of 21.5 acres of desert tortoise habitat at a compensation ratio of 1:1. The compensation is in the form of funds provided at the rate of \$540/acre to the BLM for acquisition of desert tortoise habitat and in addition, a management endowment and enhancement fee for the compensation lands at \$295/acre for a total of \$6,342, would be provided to the Department to assure management of

the lands; 2) the on-site biological supervision/monitoring to be conducted by a qualified biologist to minimize harm/harassment of desert tortoises during all project-related activities and 3); the handling of tortoises only via procedures established in the *Guidelines for Handling Desert Tortoises During Construction Projects* (Desert Tortoise Council 1994, revised 1999).

Pursuant to Section 2080.1 of the Fish and Game Code, with this determination Whitewater Hill Wind Partners, LLC will not need to obtain authorization pursuant to CESA for take of the desert tortoise in carrying out the project, provided the project constructed remains as it is described in the Biological Opinion. A new Consistency Determination or a CESA incidental take authorization must be obtained from the Department if the project as described in the Biological Opinion, including mitigation or conservation requirements set forth in the Biological Opinion, is changed after issuance of that Opinion by the Service.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF CONSENT DECREES PURDY SITE MOJAVE, CALIFORNIA

The Department of Toxic Substances Control ("DTSC"), pursuant to the authority vested in DTSC under California Health and Safety Code, Sections 25360 and 58009, proposes to finalize three Consent Decrees regarding the Purdy Site located at 12901 United Street in Mojave, California ("Site"). The Consent Decrees are between DTSC and the Burlington Northern and Santa Fe Railway including its predecessor, Atchison, Topeka and Santa Fe Railway Company, (together referred to as "BNSF"); DTSC and Union Pacific Railroad Company, including its predecessors, Southern Pacific Railroad Company and St. Louis Southwestern Railway Company, (together referred to as "UP"); and DTSC and the Purdy Company of Illinois and the Purdy Company of California (together referred to as "Purdy").

On May 21, 2002, DTSC filed a complaint in the United States District Court, Eastern district of California, Docket No. CV-F-97 5625 AWI LJO, against the above-named defendants under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601 et seq. The Consent Decrees are intended to obtain settlement, as specified in the Consent Decrees, with BNSF, UP and Purdy on DTSC's complaint,

which includes response costs incurred by DTSC at or in connection with the Site. The Consent Decree provides for contribution protection to the defendants to the fullest extent provided by law.

DTSC will consider public comments on the Consent Decrees which are received by DTSC within thirty (30) days of the date of this notice. DTSC may withhold finalization of the Consent Decrees if such comments disclose facts or considerations that indicate the proposed Consent Decrees are inappropriate, improper or inadequate.

The Consent Decrees and additional background information relating to the Site are available for public inspection at the Department of Toxic Substances Control, 1515 Tollhouse Road, Clovis, California 93611. A copy of the Consent Decrees may also be obtained by contacting the DTSC representative listed below:

Kevin Shaddy, Project Manager
Site Mitigation Cleanup Operations
Department of Toxic Substances Control
1515 Tollhouse Rd.
Clovis, California 93611
Phone: (559) 297-3901
Facsimile: (559) 297-3904

RULEMAKING PETITION DECISIONS

DEPARTMENT OF CONSERVATION

May 17, 2002

Mr. Scott Lamb
TOMRA Pacific, Inc.
150 Klug Circle
Corona, CA 92880-5424

Dear Mr. Lamb:

This is in response to your petition, dated April 23, 2002, regarding the establishment of a commingled rate for reverse vending machines (RVMs). This letter is to inform you that the Department of Conservation (Department) has received your petition, and will commence the rulemaking process.

Pursuant to Government Code Section 11340.7, the Department is filing this decision with the Office of Administrative Law for publication in the California Regulatory Notice Register (Register). This decision will be published in the Register on or before June 7, 2002.

Interested parties may obtain a copy of the petition from the Department by writing to the address below or by calling (916) 327-2761.

Department of Conservation
Division of Recycling
Attn: Marty Nold
801 "K" St., MS 18-58
Sacramento, CA 95814

Sincerely,

Jim Ferguson
Assistant Director for Recycling

DEPARTMENT OF CORRECTIONS

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3

PETITIONER

Paul B. Hebbe.

AUTHORITY

Under authority established in Penal Code (PC) Section 5058 the Director may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC Section 5068 authorizes the Director to prescribe and amend regulations for administration of prisons and specifically require the Director to examine, investigate, and classify each person committed to State prison.

CONTACT PERSON

Please direct any inquiries regarding this action to Rick Grenz, Chief, Regulation and Policy Management Branch, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001, or telephone (916) 322-9702.

AVAILABILITY OF PETITION

The petition for amendment of the regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner requests the Department of Corrections amend the California Code of Regulations (CCR), Title 15, Division 3, Sections 3377.2 to eliminate the use of "Total Term" as criteria for Close Custody designation.

DEPARTMENT DECISION

The Director of Corrections denies the petition to amend CCR Section 3377.2.

The CCR, Section 3377.2(a)(1) states in part, "The case factors to be considered in the assigning Close Custody include, but are not limited to, the following:

- (A) the inmate's total term, sentence, or remaining time to serve;
- (B) the inmate's escape history;
- (C) identification of a management concern;
- (D) receipt of an active law enforcement felony hold;
- (E) a finding of guilt for a serious Rules Violation Report;
- (F) an inmate who is considered High Notoriety or is designated as a Public Interest Case.

The Petitioner contends that the use of "Total Term" as criteria for Close Custody designation "creates ambiguous results when classifying persons as Close A or Close B Custody." He further contends that the Close Custody criteria, "be based on the Earliest Possible Release Date (EPRD)." He contends that the majority of Determinate Sentenced inmates do not get out of prison based on their Total Term/sentence, but rather on the date given for earning behavior/work credits reducing their total term/sentence.

The Department contends that the Total Term is the sentence imposed by the courts. Lengthy Total Term sentences are viewed as security concerns by the departmental Classification Services Unit and are subsequently included as classification screening criteria for accurate and appropriate custody level placement. However, the EPRD is affixed to all sentences for crimes committed on or after July 1977 (except for Life prisoners) to satisfy regulatory requirements.

The establishment of this date is statutory, however, this date is impacted by PC 2933, Work Incentive, and is subject to change throughout the period of incarceration based on the inmate's work/training participation. The CCR, Section 3377.2, Criteria for Assignment of Close Custody, was adopted to make specific and clarify Close Custody criteria.

The Department contends that the Petitioner's request to eliminate "Total Term" as a Close Custody criteria based on the EPRD modifying effect on determinate sentencing would create a clarity issue in the CCR and would be inconsistent with PC 5068. A classification action taken based upon the criteria set forth in CCR Section 3377.2(A), specifically "Total Term," with the objective of housing an inmate in the

least restrictive setting commensurate with his or her need for supervision, is well within the scope of authority mandated by the Penal Code, and is necessary to protect public safety, ensure institutional safety, and is consistent application of the regulations.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Zero-Emission Vehicle Regulation Amendments

This resubmitted regulatory action amends the California Zero Emission Vehicle Program regulations. The proposed amendments include adjustments to the rate and timing of ZEV and Partial ZEV ("PZEV") sales mandates and adjustments to various credit and allowance mechanisms. Among the amendments made is the phased-in addition of SUV's and minivans (defined as Light-Duty Trucks 2 ("LDT2")), to the volume production calculation used to determine the number of vehicles to which a manufacturer's percentage ZEV mandate is applied beginning in the 2007 model year. This regulatory action is the resubmittal of previously disapproved OAL file number 01-1207-02S.

Title 13

California Code of Regulations

AMEND: 1900, 1960.1 (k), 1961, 1962 & the Incorporated Test Procedure

Filed 05/24/02

Effective 06/23/02

Agency Contact:

W. Thomas Jennings (916) 322-2884

BOARD OF FORESTRY AND FIRE PROTECTION

Comment/ Review Period-2002

This is nonsubstantive change without regulatory effect per 1 CCR 100(a)(6) in order to make the regulations consistent with changed statute.

Title 14

California Code of Regulations

AMEND: 1037.4, 1092.19

Filed 05/22/02

Effective 01/01/03

Agency Contact: James L. Mote (916) 653-9418

BUREAU OF AUTOMOTIVE REPAIR

Vehicle Smog Check Inspection Standards and Test Procedures

This regulatory action amends a Bureau of Automotive Repair (Department of Consumer Affairs) regulation setting forth the "mandatory emissions inspection standards and test procedures" for the vehicle Smog Check Program. The Bureau modifies its table of acceleration simulation mode emissions standards and gross polluter standards for use in loaded-mode testing of vehicles in enhanced program areas.

Title 16

California Code of Regulations

AMEND: 3340.42

Filed 05/28/02

Effective 06/27/02

Agency Contact: James Allen (916) 255-4300

BUREAU OF BARBERING AND COSMETOLOGY

Cleaning and Disinfecting Whirlpool Footspas

This regulatory action is the Certificate of Compliance filing making permanent the prior emergency adoption of provisions establishing cleaning and disinfecting procedures for whirlpool footspas and administrative fines for initial and repeat violations of the procedures. The prior emergency filings were OAL file numbers 01-0508-06E, 01-0910-01EE, 02-0111-03EE.

Title 16

California Code of Regulations

ADOPT: 980.1 AMEND: 974

Filed 05/29/02

Effective 05/29/02

Agency Contact: Tiffany Wetzel (916) 324-8945

COMMISSION ON PEACE OFFICER

STANDARDS AND TRAINING

Training and Testing Specifications for Peace Officer Basic Courses

This action updates Training Domains 23 (Crimes in Progress) and 36 (Information Systems) which are included in the Training and Testing Specifications for the Peace Officer Basic Course.

Title 11

California Code of Regulations

AMEND: 1005

Filed 05/24/02

Effective 07/01/02

Agency Contact: Leah Cherry (916) 227-3891

CONTRACTORS STATE LICENSE BOARD

Framing and Rough Carpentry Contractor

The regulatory action amends existing section 832.05 so that the C-5 classification is only for framing and rough carpentry contractors and adopts section 832.06 which creates the C-6 classification for cabinet, millwork and finish carpentry contractors. The regulatory action is effective June 23, 2002 but does not become operative until January 1, 2003, or as soon thereafter as administratively feasible.

Title 16

California Code of Regulations

ADOPT: 832.06 AMEND: 832.05

Filed 05/24/02

Effective 06/23/02

Agency Contact: Linda Morales (916) 255-4086

DEPARTMENT OF CHILD SUPPORT SERVICES

Monthly Statement of Collections and Distribution and Important Information Sheet (Barnes Notice)

In this emergency regulatory action, the Department of Child Support Services is providing for notices that local child support agencies must send to custodial parties who are recipients of child support services when the local child support agency collects and distributes child support payments relating to the custodial party. The notices include a "monthly statement of collections and distribution" and a "notice of important information".

Title 22, MPP

California Code of Regulations

ADOPT: Title 22 section 119184 REPEAL: MPP section 12-225.3

Filed 05/29/02

Effective 07/01/02

Agency Contact: Lucila Ledesma (916) 464-5087

DEPARTMENT OF FOOD AND AGRICULTURE

Containers for table grapes, nectarines, peaches, plums

This rulemaking adopts new standard container 38M for table grapes, and adopts a new standard container 35 for nectarines, peaches and plums.

Title 3

California Code of Regulations

AMEND: 1380.19, 1436.38, 1446.7, 1454.14, 1462.15

Filed 05/29/02

Effective 05/29/02

Agency Contact:

Heather K. Spencer (916) 654-0919

DEPARTMENT OF GENERAL SERVICES

Implementation of Government Code Section 19134

This regulatory action establishes the requirements and procedures for state agencies entering into personal services contracts that would include provi-

sions for employee benefits that are valued at 85% or more of the state employer cost of providing comparable benefits to state employees performing similar duties.

Title 2

California Code of Regulations

ADOPT: 1896.300, 1896.310, 1896.320, 1896.330, 1896.340, 1896.350, 1896.360, 1896.370

Filed 05/28/02

Effective 05/28/02

Agency Contact:

Laurie Giberson (916) 322-5953

FISH AND GAME COMMISSION

Sheephead, Cabezon and Greenling Fisheries Optimum Yields/Allocations

This action would authorize the Department of Fish and Game to close recreational and commercial fisheries upon project attainment of optimum yields and fishery allocations as specified. It describes the procedure the Department will follow in making projections of commercial and recreational catch using landing receipt information and the best available scientific information. Provisions for notification of the Commission, commercial permittees and the public of upcoming closure are also included.

Title 14

California Code of Regulations

ADOPT: 52.10

Filed 05/23/02

Effective 05/23/02

Agency Contact: John M. Duffy (916) 653-4899

FRANCHISE TAX BOARD

Exclusion of Certain Activities from Taxing Jurisdiction

The Franchise Tax Board is amending the captioned section making editorial corrections as well as eliminating references to "income year", and replacing it with the term "taxable year" in compliance with those changes made in Stats, 2000. ch. 862. Further, a requirement for "annual confirmations" was added to subsection (g) of the captioned section in order to conform to those changes made by Revenue and Taxation Code section 23101.5(d).

Title 18

California Code of Regulations

AMEND: 23101.5

Filed 05/29/02

Effective 06/28/02

Agency Contact:

Colleen Berwick (916) 845-3306

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Operating Rules for Industrial Trucks

This regulatory action amends and reorganizes provisions dealing with the operation of industrial trucks.

Title 8

California Code of Regulations

AMEND: 3650, 3664

Filed 05/28/02

Effective 06/27/02

Agency Contact: Marley Hart (916) 274-5721

OFFICE OF THE STATE FIRE MARSHAL

Hazardous Liquid Pipeline Safety

This action adopts by reference Title 49 of the Code of Federal Regulations as it relates to hazardous liquid pipelines. This action also amends an address. The action is submitted for filing and printing only pursuant to Government Code section 51011.

Title 19

California Code of Regulations

ADOPT: 2000

Filed 05/22/02

Effective 06/21/02

Agency Contact:

Rodney Slaughter (916) 445-8454

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Reportability of Uniform Allowances

The proposed regulatory action amends provisions governing the reportability of uniform allowances to include the reporting of the monetary value of clothing made from specially designed protective fabrics which is not intended to be used solely for personal health and safety.

Title 2

California Code of Regulations

AMEND: 571(a)(5)

Filed 05/22/02

Effective 06/21/02

Agency Contact: Joe Parilo (916) 326-3484

STATE WATER RESOURCES CONTROL BOARD

Water Quality Control Plan, Colorado River Basin

This action establishes water quality objectives in the form of TMDLs for three indicator pathogens (E. coli, enterococci, and fecal coliform) in the New River to protect its beneficial uses. The Basin Plan amendment includes a multi-pronged implementation plan with designated responsible parties and time schedules, monitoring and enforcement responsibilities, and so on. Because the New River spans the Mexican and U.S. borders, international treaties and oversight bodies as well as the federal EPA are responsible for specified actions. OAL has reviewed this action under Government Code section 11353.

Title 23

California Code of Regulations

ADOPT: 3962

Filed 05/23/02

Effective 05/23/02

Agency Contact: Joanne Cox (916) 341-5552

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN JANUARY 23, 2002
TO MAY 29, 2002**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

02/22/02 AMEND: 121, Appendix A

Title 2

05/28/02 ADOPT: 1896.300, 1896.310, 1896.320, 1896.330, 1896.340, 1896.350, 1896.360, 1896.370

05/22/02 AMEND: 571(a)(5)

05/13/02 AMEND: 18428

05/10/02 AMEND: 18351

05/09/02 AMEND: 20202, 20206, 20210, 20224, 20234, 20298, 20350, 20363, 20910
REPEAL: 20106, 20205, 20213

05/02/02 ADOPT: 1859.104.1, 1859.104.2, 1859.104.3 AMEND: 1859.2, 1859.21, 1859.50, 1859.51, 1859.61, 1859.70, 1859.73.1, 1859.73.2, 1859.74.1, 1859.75.1, 1859.76, 1859.78.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.91, 1859.95, 1859.100, 1859.101, 1859.102,

05/02/02 AMEND: 2271

04/26/02 ADOPT: 18520 AMEND: 18521, 18523, 18523.1

04/19/02 ADOPT: 18537.1

04/10/02 ADOPT: 1859.74.4 AMEND: 1859.2, 1859.20, 1859.21, 1859.30, 1859.33, 1859.40, 1859.41, 1859.42, 1859.43, 1859.50, 1859.51, 1859.60, 1859.70, 1859.73.1, 1859.73.2, 1859.74.1, 1859.74.4, 1859.75.1, 1859.76, 1859.78.2, 1859.79.3, 1859.81, 1859.81.1, 1859

04/04/02 ADOPT: 60, 60.1, 60.2, 60.3, 60.4, 60.5, 60.6, 60.7, 60.8, 60.9, 60.10

03/27/02 ADOPT: 59100
 03/19/02 ADOPT: 599.930
 03/18/02 AMEND: 599.502, 599.508
 03/15/02 ADOPT: 1859.200, 1859.201, 1859.202, 1859.203, 1859.204, 1859.205, 1859.206, 1859.207, 1859.208, 1859.209, 1859.210, 1859.211, 1859.212, 1859.213, 1859.214, 1859.215, 1859.216, 1859.217, 1859.218, 1859.219, 1859.220
 03/13/02 AMEND: 56800
 03/07/02 ADOPT: 2351
 02/19/02 ADOPT: 18450.11
 02/19/02 ADOPT: 18530.8
 02/19/02 ADOPT: 18543 REPEAL: 18543
 02/14/02 ADOPT: 18404.1 REPEAL: 18404.2
 02/05/02 ADOPT: 433.1 AMEND: 433
 01/31/02 ADOPT: 18421.4
 01/30/02 AMEND: 55300
 01/24/02 ADOPT: 58500
 01/24/02 ADOPT: 18450.3, 18450.4, 18450.5 AMEND: 18402

Title 3

05/29/02 AMEND: 1380.19, 1436.38, 1446.7, 1454.14, 1462.15
 05/16/02 AMEND: 1428.12, 1428.16
 05/02/02 AMEND: 3700(a), (b), & (c)
 04/23/02 ADOPT: 899.2 AMEND: 899.1
 04/23/02 AMEND: 3591.12(a)
 04/18/02 AMEND: 6510, 6793
 04/12/02 AMEND: 3423(b)
 04/11/02 ADOPT: 3664, 3665, 3666, 3667, 3668, 3669
 04/08/02 AMEND: 6450.2, 6450.3, 6784
 04/04/02 AMEND: 3033.2, 3033.3, 3033.4
 04/02/02 ADOPT: 480.9 AMEND: 480.7
 03/12/02 AMEND: 3423(b)
 03/12/02 AMEND: 3423(b)
 03/08/02 ADOPT: 306, 6188, 6780 AMEND: 6000
 02/22/02 AMEND: Div. 1, Chapter 1.1, Section 2 and Appendix
 02/20/02 AMEND: 3591.16(a)
 02/07/02 AMEND: 3591.12 (a)
 02/04/02 AMEND: 1392.1, 1392.2, 1392.4, 1392.9.1
 02/04/02 AMEND: 3591.13 (a)
 01/30/02 ADOPT: 2681, 2799 AMEND: 2675, 2676, 2694, 2695, 2697, 2701, 2734, 2773.1, 2773.5, 2774, 2774.5, 2775, 2778, 2782, 2783, 2783.5, 2788, 2789, 2790, 2790.5, 2793, 2794, 2796, 2798, 2801, 2802

Title 4

05/13/02 ADOPT: 8110, 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8120, 8121, 8122, 8123, 8124, 8125
 05/07/02 ADOPT: 3005, 3006, 3007, 3008, 3009, 3010 AMEND: 1928
 04/16/02 AMEND: 1405, 1527
 03/21/02 ADOPT: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101
 03/19/02 ADOPT: 12100, 12102, 12104, 12106, 12108, 12120, 12130
 02/13/02 AMEND: 1691
 02/06/02 AMEND: 1858
 01/31/02 AMEND: 1467
 01/28/02 AMEND: 1844

Title 5

05/21/02 AMEND: 80026.4, 80026.6, 80122
 05/08/02 ADOPT: 80434 AMEND: 80001
 03/25/02 ADOPT: 11980, 11981, 11982, 11983, 11984, 11985, 11986
 03/20/02 AMEND: 59300, 59302, 59303, 59304, 59305, 59306, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59333, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59358, 59360, 59362
 03/20/02 AMEND: 50500
 03/15/02 ADOPT: 11963, 11963.1, 11963.2, 11963.3, 11963.4
 03/12/02 ADOPT: 18400, 18405, 18406, 18407, 18408, 18409, 18409.5, 18410, 18411, 18412, 18413, 18414, 18415, 18416, 18417, 18418, 18419, 18420, 18421, 18422, 18423, 18424, 18425, 18426, 18427, 18428, 18429, 18430, 18431, 18432, 18433, AMEND: 18409.5, 18409(e),
 03/01/02 ADOPT: 11967.5, 11967.5.1
 02/20/02 AMEND: 41906.5
 02/19/02 ADOPT: 55753.5, 55753.7 AMEND: 55753
 02/08/02 ADOPT: 43095 REPEAL: 43101
 02/08/02 AMEND: 40407.1
 02/08/02 AMEND: 42350.6
 01/24/02 AMEND: 43880, 43881, 43882, 43883, 43884
 01/24/02 AMEND: 11530, 11531

Title 7

04/04/02 ADOPT: 237

Title 8

05/28/02 AMEND: 3650, 3664

05/20/02 AMEND: 32125, 32130, 32140, 32603, 32604, 32720, 32735, 32738, 32739, 32744, 32752, 32763, 32980

05/07/02 ADOPT: 11080, 11090, 11100, 11110, 11120, 11130, 11150 REPEAL: 11080, 11090, 11100, 11130, 11130, 11150

05/06/02 AMEND: 3089

05/02/02 AMEND: 100, 106, 107

05/01/02 ADOPT: 11140 AMEND: 11140

05/01/02 ADOPT: 1716.2 AMEND: 1632, 1635, 1671, 1709, 1710

04/22/02 AMEND: 2320.2 of the Low voltage Electrical safety orders

04/03/02 AMEND: 1626

03/28/02 ADOPT: 341.15

03/05/02 AMEND: 3251

02/22/02 ADOPT: 11010, 11020, 11030, 11040, 11050, 11060, 11070, 11080 REPEAL: 11010, 11020, 11020, 11040, 11050, 11060, 11070, 11080

02/14/02 AMEND: 17

02/08/02 AMEND: 3641, 3648

01/30/02 ADOPT: New Appendix D AMEND: 450, 453, 471, 475, 477, 494 REPEAL: 486, 487

Title 8, 24

05/08/02 AMEND: 3011(d), 3120.1 and 3122.0

Title 10

05/01/02 ADOPT: 2278, 2278.1, 2278.2, 2278.3, 2278.4, 2278.5

04/29/02 ADOPT: 1729, 1741.5, 1950.302 AMEND: 1741.5

04/29/02 ADOPT: 2699.6606, 2699.6711, 2699.6631, 2699.6631, 2699.6717 AMEND: 2699.6500, 2699.6600, 2699.6605, 2699.6607, 2699.6611, 2699.6613, 2699.6617, 2699.6623, 2699.6625, 2699.6629, 2699.6700, 2699.6703, 2699.6705, 2699.6709, 2699.6800, 2699.6801, 2699.6809

04/16/02 AMEND: 2698.73

03/27/02 ADOPT: 260.204.9

03/26/02 AMEND: 250.30

03/22/02 AMEND: 2698.200, 2698.201, 2698.301, 2698.302

03/21/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3, 2130.4, 2130.5, 2130.6, 2130.7.8

03/18/02 ADOPT: 1422 & 1423

02/27/02 AMEND: 2498.6

02/26/02 ADOPT: 2581.1, 2581.2, 2581.3, 2581.4

02/11/02 AMEND: 10.3154

02/11/02 AMEND: 4019

02/11/02 AMEND: 5002

02/07/02 AMEND: 260.102.19, 260.140.41, 260.140.42, 260.140.45, 260.140.46

01/31/02 ADOPT: 2192.1

01/31/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3, 2130.4, 2130.5, 2130.6, 2130.7, 2130.8

Title 11

05/24/02 AMEND: 1005

05/21/02 AMEND: 1005

05/06/02 ADOPT: 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 48

04/26/02 AMEND: 1005, 1008

04/25/02 ADOPT: 1081(a)(32)

04/23/02 AMEND: 3000. 3001, 3003, 3007, 3008

04/22/02 AMEND: 900, 901, 902, 903, 904, 905, 906, 907, 908, 911

04/15/02 ADOPT: 999.10, 999.11, 999.12, 999.13, 999.14 and Appendix A

03/14/02 ADOPT: 1081(a) [31]

03/11/02 AMEND: 1005, 1007

03/07/02 AMEND: 1018

03/06/02 ADOPT: Article 20, Section 51.19

02/25/02 ADOPT: 410, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426

02/19/02 AMEND: 20

Title 13

05/24/02 AMEND: 1900, 1960.1 (k), 1961, 1962 & the Incorporated Test Procedure

04/29/02 AMEND: 350.44

04/04/02 ADOPT: 565

03/25/02 AMEND: 345.04, 345.41

03/20/02 ADOPT: 1235.1, 1235.2, 1235.3, 1235.4, 1235.5, 1235.6 AMEND: 1200

03/08/02 ADOPT: 593.3

02/19/02 ADOPT: 156.00

02/05/02 AMEND: 160.00, 170.00

01/30/02 AMEND: 553.70

Title 14

05/23/02 ADOPT: 52.10

05/22/02 AMEND: 1037.4, 1092.19

05/21/02 ADOPT: 17367, 17368, 17369, 17370.1, 17370.2, 18225

05/20/02 AMEND: 149

04/29/02 AMEND: 27.80

04/11/02 ADOPT: 104.1

04/10/02 AMEND: 17943(b)(26)

04/10/02 AMEND: 27.67

04/04/02 AMEND: 670.2
 03/26/02 AMEND: 28.59
 03/25/02 ADOPT: 180.15
 03/25/02 AMEND: 2090, 2105, 2420, 2425, 2530, 2690
 03/14/02 AMEND: 150
 03/14/02 AMEND: 180.3
 03/13/02 ADOPT: 18627
 03/04/02 AMEND: 2030
 03/04/02 ADOPT: 17211, 17211.1, 17211.2, 17211.3, 17211.4, 17211.5, 17211.6, 17211.7, 17211.8, 17211.9
 02/28/02 ADOPT: 4971
 02/22/02 AMEND: 2135
 02/04/02 AMEND: 17979

Title 15

05/08/02 ADOPT: 4746.5
 05/06/02 AMEND: 3104
 04/17/02 AMEND: 3276
 03/20/02 AMEND: 3401.5
 03/11/02 ADOPT: 3501
 03/07/02 AMEND: 3375.2
 02/28/02 AMEND: 2005
 01/31/02 AMEND: 3041.3

Title 16

05/29/02 ADOPT: 980.1 AMEND: 974
 05/28/02 AMEND: 3340.42
 05/24/02 ADOPT: 832.06 AMEND: 832.05
 05/21/02 ADOPT: 1356.5
 05/21/02 ADOPT: 2412 AMEND: 2411, 2418
 05/21/02 AMEND: 2006
 05/16/02 AMEND: 832.54
 05/08/02 AMEND: 832.09
 05/02/02 AMEND: 3303, 3353, 3361.1
 04/09/02 AMEND: 2010.1, 2024, 2025
 04/02/02 AMEND: 2068.5
 03/29/02 REPEAL: 1044.4
 03/29/02 AMEND: 2620.5, 2649, 2671
 03/26/02 AMEND: 1950, 1950.2, 1970.4 REPEAL: 1990.1, 1991.1
 03/25/02 AMEND: Section 1888
 03/20/02 AMEND: 1083
 02/28/02 ADOPT: 4100, 4101, 4102, 4110, 4111, 4112, 4113, 4114, 4120, 4121, 4122, 4130
 02/26/02 AMEND: 3394.4, 3394.6
 02/20/02 AMEND: 1388, 1388.6, 1389, 1392, 1397.63 REPEAL: 1388.5
 02/19/02 AMEND: 1387.6, 1387.7, 1387.8
 02/13/02 AMEND: 3361.1
 02/11/02 ADOPT: 2085.4
 02/04/02 AMEND: 1399.157
 02/04/02 ADOPT: 2085, 2085.1, 2085.2, 2085.3, 2085.4, 2085.5, 2085.6, 2085.7, 2085.8, 2085.9, 2085.10, 2085.11, 2085.12, 2085.13 AMEND: 2070

01/31/02 AMEND: 411
 01/31/02 ADOPT: 1399.698
 01/28/02 AMEND: 1531

Title 17

05/16/02 AMEND: 6508
 05/02/02 ADOPT: 2641.5, 2641.10, 2641.15, 2641.20, 2641.25, 2641.30, 2641.35, 2641.45, 2641.50, 2641.55, 2641.60, 2641.65, 2641.70, 2641.75, 2641.77, 2641.80, 2641.85, 2641.90, 2643.5, 2643.10, 2643.15, 2643.20.
 04/22/02 AMEND: 70500, 70600
 04/11/02 AMEND: 58420
 04/10/02 ADOPT: 54327.2 AMEND: 54302, 54327, 54327.1, 56002, 56026, 56093, 58651
 03/27/02 AMEND: 57310, 57332, 57530
 03/12/02 ADOPT: 33001, 33002, 33003, 33004, 33005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, 33013, 33014, 33015, 33025 AMEND: 33020, 33030, 33040 REPEAL: 3001, 33010
 03/01/02 ADOPT: 2638 AMEND: 2500, 2502, 2505, 2551, 2552, 2553, 2596, 2614, 2626
 02/28/02 AMEND: 56002, 56031, 56033, 56034, 56134.1, 56035, 56036, 56037, 56038, 56048, 56054, 56057, 56059, 56060

Title 18

05/29/02 AMEND: 23101.5
 05/20/02 ADOPT: 138
 05/16/02 ADOPT: 139
 05/15/02 AMEND: 1699
 05/14/02 AMEND: 1603
 05/14/02 AMEND: 905
 05/13/02 ADOPT: 4011 AMEND: 4061
 05/13/02 ADOPT: 1434
 04/17/02 ADOPT: 305.3
 04/16/02 AMEND: 1525.2
 04/16/02 AMEND: 1532
 04/16/02 AMEND: 1668
 04/03/02 AMEND: 25110
 04/03/02 ADOPT: 138
 04/02/02 AMEND: 25114
 04/02/02 AMEND: 25111-1
 03/19/02 AMEND: 25112
 03/13/02 AMEND: 24411
 03/12/02 REPEAL: 25111.1
 03/12/02 AMEND: 24344(c)
 03/12/02 REPEAL: 25111

03/11/02 AMEND: 25106.5-0, 25106.5
 03/08/02 AMEND: 6001
 02/28/02 REPEAL: 25115

Title 19

05/22/02 ADOPT: 2000
 05/16/02 REPEAL: 596.15 & 596.16 & Article 12
 thru Article 23
 04/02/02 ADOPT: 2575, 2575.1, 2575.2, 2576,
 2576.1, 2577, 2577.1, 2577.2, 2577.3,
 2577.4, 2577.5, 2577.6, 2577.7, 2577.8,
 2578, 2578.1, 2578.2
 02/08/02 AMEND: 2900, 2910, 2915, 2940, 2945,
 2955, 2970, 2980, 2990

Title 20

03/08/02 ADOPT: 1207, 1212, 1710, 1712, 1714.5,
 1718, 1741, 1748, 1751, 1752, 1755,
 1940, 1945, 2021

Title 21

02/05/02 AMEND: 7101, 7102, 7111, 7114, 7116

Title 22

04/30/02 AMEND: 51515(c), 51515(e), 51518(b),
 51521(1), 51527(b)
 04/18/02 AMEND: 4304-12
 04/16/02 AMEND: 4408, 4409, 4414
 04/16/02 AMEND: 12000
 04/11/02 AMEND: 66261.6
 04/08/02 ADOPT: 68300, 68301, 68302, 68303,
 68304, 68305, 68306, 68307, 68308,
 68309
 04/04/02 ADOPT: 66270.42.5, 66271.20 AMEND:
 66270.42, 66271.18, 66270.21
 04/04/02 AMEND: 66270.69, 67800.1, 67800.5
 04/04/02 AMEND: 66262.54, 66264.71, 66264.71,
 66265.71, 66265.72, 66270.30, Appendix
 03/26/02 ADOPT: 66273.6, 66273.80, 66273.81,
 66273.82, 66273.83, 66273.84, 66273.85,
 66273.86, 66273.87, 66273.88, 66273.89,
 66273.90 AMEND: 66261.9, 66273.1,
 662173.8, 66273.9
 03/21/02 AMEND: 926-3, 926-4, 926-5
 03/19/02 ADOPT: 110250, 110374, 117016,
 117019, 117021, 117025, 117030,
 117036, 117042, 117047, 117049,
 117052, 117054, 117064, 117074,
 117080, 117083, 117085, 117089,
 117091, 117094, 117200, 117300,
 117301, 117302, 117303, 117400,
 117401, 117402, 117403, 117404,
 03/07/02 ADOPT: 67900.1, 67900.2, 67900.3,
 67900.4, 67900.5, 67900.6, 67900.7,
 67900.8, 67900.9, 67900.10, 67900.11,
 67900.12
 03/06/02 ADOPT: 64860
 03/05/02 ADOPT: 111900, 111910, 111920,
 121100, 121120, 121140

03/01/02 ADOPT: 68200, 68201, 68202, 68203,
 68204, 68205, 68206, 68207, 68208,
 68209, 68210, 68211, 68212, 68213

03/01/02 AMEND: 14000

02/28/02 AMEND: 12000

02/21/02 ADOPT: 110041, 110098, 110284,
 110299, 110428, 110430, 110473,
 110539, 112002, 112015, 112025,
 112034, 112035, 112100, 112110,
 112130, 112140, 112150, 112152,
 112154, 112155, 112200, 112210,
 112300, 11230.1, 112302 AMEND:
 110042, 110431, 110609

02/20/02 AMEND: 100209 (c)

02/13/02 ADOPT: 68300, 68301, 68302, 68303,
 68304, 68305, 68306, 68307, 68308,
 68309

02/11/02 ADOPT: 110413, 110550, 113100,
 113200, 113300 REPEAL: 12-104.1, 12-
 104.432, 12-221

02/08/02 AMEND: 66260.10, 66261.9, 66262.11,
 66264.1, 66265.1, 66268.1, 66270.1,
 66273.1, 66273.2, 66273.3, 66273.4,
 66273.5, 66273.6, 66273.7, 66273.8,
 66273.9, 66273.10, 66273.11, 66273.12,
 66273.13, 66273.14, 66273.15, 66273.16,
 66273.17, 66273.18, 66273.19,

01/30/02 ADOPT: 67450.40, 67450.41, 67450.42,
 67450.43, 67450.44, 67450.45, 67450.46,
 67450.47, 67450.48, 67450.49, 67450.50
 AMEND: 66262.20, 66270.6

01/24/02 REPEAL: Repeal the language "(See
 Section 3901.1, Retraining Benefits Defi-
 nitions)" below Article 1.5. Retraining
 Benefits.

Title 22, MPP

05/29/02 ADOPT: Title 22 section 119184 RE-
 PEAL: MPP section 12-225.3

05/02/02 ADOPT: 110411, 110625, 111110,
 111120, 111210, 111220, 111230 RE-
 PEAL: MPP 12-000, 12-003, and Appen-
 dix I

04/08/02 ADOPT: 85081, 87593 AMEND: 85001,
 87101

03/25/02 ADOPT: 110385, 110449, 110554,
 118020, 118203 REPEAL: 12-301.1, 12-
 301.2, 12-301.3, 12-302.1, 12-302.2, 12-
 302.3, 12-302.4, 12-302.5

02/21/02 AMEND: 87102, 87564.3, 87730

Title 23

05/23/02 ADOPT: 3962
 05/03/02 AMEND: 3961
 04/17/02 AMEND: Article 6, section 645
 04/03/02 AMEND: 3954
 04/03/02 AMEND: 2712(e)
 02/13/02 AMEND: 3923

Title 25

04/26/02 AMEND: 7060, 7062.1, 7078.2, 7078.4,
 7078.5
 04/04/02

Title 27

05/09/02 AMEND: 22200, 22228, 22233, 22248,
 Form CIWMB 106 (08/2001)
 03/05/02 AMEND: 15110, 15240

Title 28

04/24/02 ADOPT: 1300.41.8
 02/14/02 ADOPT: 1300.67.05

Title MPP

05/09/02 ADOPT: 44-302 AMEND: 25-301, 25-302, 25-303, 25-304, 25-305, 25-306, 25-310.3, 25-330.9, 25-506, 44-304, 44-305, 44-325, 44-327, 80-310
 04/26/02 ADOPT: 16-001, 16-003, 16-005, 16-010, 16-015, 16-105, 16-120, 16-130, 6-201, 16-215, 16-301, 16-310, 16-315, 16-320, 16-325, 16-401, 16-410, 16-501, 16-505, 16-510, 16-515, 16-517, 16-520, 16-601, 16-610, 16-701, 16-750, 16-801 AMEND: 20-300, 44-302,
 03/06/02 AMEND: 63-403
 02/28/02 AMEND: 63-102, 63-103, 63-300, 63-301, 63-503
 02/28/02 ADOPT: 40-107.141, 40-107.142, 40-107.143, 40-107.15, 40-107.151, 40-107.152, 42-302.114, 42-302.114(a)-(c), 42-302.21(h)(1), 42-302.3, 44-133.8, 82-833 AMEND: 40-107.14, 40-107.16, 40-107.17, 40-107.18, 40-107.19, 42-301.2, 44-133.51, 82-832
 02/21/02 AMEND: 63-102, 63-300, 63-301, 63-402, 63-405, 63-501, 63-502, 63-503, 63-504, 63-507
 01/30/02 ADOPT: 69-209, 69-210 AMEND: 69-201, 69-202, 69-203, 69-204, 69-205, 69-206, 69-207, 69-208, 69-211, 69-212, 69-213, 6-214, 69-215, 69-216, 69-217, 69-301 REPEAL: 69-210, 69-221
 01/23/02 ADOPT: 33-135 AMEND: 33-120, 33-510, 33-805

**OAL REGULATORY
 DETERMINATIONS**

**STATE OF CALIFORNIA
 OFFICE OF ADMINISTRATIVE LAW**

2002 OAL Determination No. 5

May 23, 2002

Requested by:

RANDY BRANSON

Concerning:

DEPARTMENT OF CORRECTIONS—Inmate Pay Schedule (Department Operations Manual Section 51120.7)

Determination issued pursuant to Government Code Section 11340.5; California Code of Regulations, title 1, section 121 *et seq.*

ISSUE

Does the inmate pay schedule contained in section 51120.7 of the Department of Corrections Operations Manual constitute a “regulation” as defined in Government Code section 11342.600, which is required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act?¹

CONCLUSION

The Department of Corrections’ inmate pay schedule contained in section 51120.7 of the Department Operations Manual constitutes a “regulation” which is required to be adopted pursuant to the Administrative Procedure Act.

BACKGROUND

When he submitted his request for determination to the Office of Administrative Law (“OAL”), Randy Branson was an inmate at the California State Prison at Corcoran. In his determination request, Mr. Branson makes reference to the inmate pay provisions for

¹ The request for determination was filed by Randy Branson, J-42183, A.S.P.- Bldg. 510-2-25L, P.O. Box 9, Avenal, CA 93204. The Department of Corrections’ response was filed by E. A. Mitchell, Interim Assistant Director, Office of Correctional Planning, Department of Corrections, P. O. Box 942883, Sacramento, CA 94283-0001. The request was given a file number of 00-003. This determination may be cited as “**2002 OAL Determination No. 5.**”

approved prison work assignments and pay contained in the Department of Corrections ("Department") Operations Manual ("DOM") section 51120.² However, he specifically challenges DOM section 51120.7, titled "Pay Schedule," which sets forth "approved job classifications and pay rates which shall be used in facility and parole inmate pay plans." DOM section 51120.7 includes skill levels, a range of minimum and maximum hourly and monthly pay rates, and information about the payment sources and special situations such as special projects and conservation camp work.³

Other provisions of the encompassing DOM section 51120 set out the sources and administration of inmate pay, the makeup of inmate pay committees, hiring and pay scale criteria, position classifications and descriptions, transfer, appraisal, and termination procedures, timekeeping documents, and update duties. Mr. Branson states in part that "[t]here is no legitimate [reason]

why the standard matrix as adopted in [the Department's] Operation Manual (D.O.M.) section 51120.7 as of 5-26-93 cannot be amended or adopted into the CCR Title 15."⁴ Before filing this request, Mr. Branson petitioned the Department to adopt or amend title 15 of the California Code of Regulations ("CCR") to incorporate clearer provisions for inmate pay and inmate pay reductions. The Department denied the petition.⁵

ANALYSIS

Whether the pay schedule contained in DOM section 51120.7 is a "regulation" subject to the Administrative Procedure Act ("APA"; ch. 3.5, commencing with sec. 11340, pt. 1, div. 3, tit. 2, Gov. Code) depends on (1) whether the APA is generally applicable to the quasi-legislative enactments of the Department, (2) whether the challenged rule is a "regulation" within the meaning of Government Code section 11342.600, and (3) whether the challenged rule falls within any recognized exemption from APA requirements.

(1) Generally, all state agencies in the executive branch of government and not expressly exempted by statute are required to comply with the rulemaking provisions of the APA when engaged in quasi-legislative activities. (*Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 126-128, 174 Cal.Rptr. 744, 746-747; Gov. Code, secs. 11342.520 and 11346.) Moreover, the term "state agency" includes, for purposes applicable to the APA, "every state office, officer, department, division, bureau, board, and commission." (Gov. Code, sec. 11000.)

Penal Code section 5054 provides that:

"The supervision, management and control of the State prisons, and the responsibility for the care,

² With his determination request, the requester submitted the May 26, 1993 version of DOM section 51120, which includes sections 51120.1 through 51120.14. These sections are now found in Article 12 of Chapter 5 of the current version of the DOM, dated May 1, 2000. The sections contained in the 1993 DOM, including the challenged section 51120.7, are essentially identical to the sections found in Article 12 of the 2000 DOM.

³ DOM section 51120.7, as it existed at the time the request was submitted to OAL, provided in full:

51120.7 The following are approved job classifications and pay rates which shall be used in facility and
PAY and pay rates which shall be used in facility and
SCHEDULE parole inmate pay plans.

Support and Inmate Welfare Funds	Skill Levels and Pay Rates			
	Skill Level		Minimum	
	Hourly	Monthly	Hourly	Monthly
Leadperson	\$.32	\$48	\$.37	\$56
Special Skill	.19	29	.32	48
Technician	.15	23	.24	36
Semi-Skill	.11	17	.18	27
Laborer	.08	12	.13	20

Monthly rates shall apply to full time employment in job classifications paid from the support budget or inmate welfare funds.

Special Projects Inmates assigned to special facility/CCC projects may be paid from the support budget at rates comparable to the Prison Authority (PIA) inmate pay program.

Requests to pay inmates assigned to special projects at the higher rate shall be directed to the Deputy Director, Institutions Division, or the Deputy Director, P&CSD, for approval.

Conservation Camps Refer to Department Operations Manual (DOM) Section 55130 for information regarding inmate pay in conservation camps.

Prison Industry Authority Refer to DOM Section 51121 for information regarding inmate pay in PIA.

⁴ Request for Determination, page 1. In the context of a request for determination under Government Code section 11340.5 and California Code of Regulations, title 1, sections 121 through 128, OAL's authority is limited to determining whether the state agency rules at issue are "regulations" as defined in Government Code section 11342.600 which are required to be adopted pursuant to the APA, and not whether the rules would meet the APA standards in Government Code sections 11349 and 11349.1.

⁵ On July 6, 1999, Mr. Branson filed a petition under Government Code section 11340.6 asking the Department to amend the title 15, CCR, provisions on inmate pay provisions and canteen allowances. On October 5, 1999, the Department granted the canteen request and denied the part of the petition concerning inmate pay amounts and procedures.

custody, treatment, training, discipline and employment of persons confined therein are vested in the director [of the Department of Corrections].”

The Department is in neither the judicial nor legislative branch of state government, and therefore, unless it is expressly exempted by statute, the APA rulemaking requirements generally apply to the Department.

Penal Code section 5058, subdivision (a), states in part as follows:

“The director [of the Department of Corrections] may prescribe and amend rules and regulations for the administration of the prisons The rules and regulations shall be promulgated and filed pursuant to [the APA] [Emphasis added.]”

Thus, the APA rulemaking requirements generally apply to the Department. (See *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 942, 107 Cal.Rptr. 596, 603 (agency created by the Legislature is subject to and must comply with APA.))

(2) Government Code section 11340.5, subdivision (a), prohibits state agencies from issuing rules without complying with the APA, and states as follows:

“(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [‘regulation’] as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]”

Government Code section 11342.600 defines “regulation” as follows:

“. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. [Emphasis added.]”

According to *Engelmann v. State Board of Education* (1991) 2 Cal.App.4th 47, 62, 3 Cal.Rptr.2d 264, 274–275, agencies need not adopt as regulations those rules that reiterate a statutory scheme which the Legislature has already established. But “to the extent any of the [agency rules] depart from, or embellish upon, express statutory authorization and language, the [agency] will need to promulgate regulations”

Similarly, agency rules properly adopted as *regulations* (i.e., CCR provisions) cannot legally be “embellished upon.” For example, *Union of American Physicians and Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 500, 272 Cal.Rptr. 886, 891 held that a terse 24-word definition of “intermediate physician service” in a Medi-Cal regulation could not legally be supplemented by a lengthy seven-paragraph passage in an administrative bulletin that went “far beyond” the text of the duly adopted regulation. Thus, statutes may legally be amended only through the legislative process; duly adopted regulations—generally speaking—may legally be amended only through the APA rulemaking process.

Under Government Code section 11342.600, a rule is a “regulation” for these purposes if (1) the challenged rule is *either* a rule or standard of general application *or* a modification or supplement to such a rule and (2) the challenged rule has been adopted by the agency to *either* implement, interpret, or make specific the law enforced or administered by the agency, *or* govern the agency’s procedure. (See *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251;⁶ *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, 890.)

For an agency rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind, or order. (*Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323–324 (a standard of general application applies to all members of any open class).) The challenged rule contained in DOM section 51120.7 applies to all members of the open class of inmates and parolees “engaged in productive work” as described in DOM section 51120.1, the inmate pay “Policy” provision. An “open class” is one whose membership could change just as the membership of the class of inmate and parolee workers could change over time. Consequently, DOM section 51120.7 is a standard of general application.

Further, the pay schedule implements, interprets, or makes specific the law enforced or administered by the Department and governs the Department’s procedure. In particular, this challenged provision implements, interprets, or makes specific Penal Code sections

⁶ OAL notes that a 1996 California Supreme Court case stated that it “disapproved” of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577, 59 Cal.Rptr.2d 186, 198. *Grier*, however, is still good law for this purpose.

2700, 5054 and 5058.⁷ Neither existing statutes applicable to the Department nor existing regulations duly adopted under the APA contain the pay schedule set forth in DOM section 51120.7. The relevant regulations (sections 3040, 3041, 3041.1, and 3041.2, title 15, CCR) generally touch on inmate work performance, placement, and pay, but do not indicate approved job classifications and the corresponding pay schedule, which is exactly what the challenged rule, section 51102.7, does. In other words, DOM section 51102.7 “embellishes upon” existing law. This provision also governs the Department’s procedure relating to inmate pay.

Thus, DOM section 51120.7 is a “regulation” as defined in Government Code section 11342.600.

(3) Does the DOM section 51120.7 pay schedule fall within any recognized exemption from APA requirements? Generally, all “regulations” issued by state agencies are required to be adopted pursuant to the APA, unless expressly exempted by statute. (Gov. Code, sec. 11346; *United Systems of Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1010, 74 Cal.Rptr.2d 407, 411 (“When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language.”) The Department seems to assert that an APA exemption applies to the inmate pay schedule, as discussed below.

The “Local Rule” Exemption: In its response to the request for determination, the Department claims that the inmate pay provisions are “not standards of general application,” and that the provisions are used by the Inmate Pay Committee (IPC) at each institution/facility “as a guideline of pay parameters along with various different factors to determine the relative worth of various inmate job assignments.”⁸ The

Department cites two cases to illustrate its argument that “California courts have long distinguished between rules applying to only one institution and those,[sic] which apply statewide.”⁹ While the Department cites valid principles distinguishing between statewide and local rules, the distinction is not relevant in this case.

The Department seems to be arguing that the “local rule” exemption applies to the inmate pay schedule, although it does not cite to the relevant Penal Code section. Penal Code section 5058, subdivision (c), added in 1995, explicitly exempts rules which apply to a particular facility or prison from the APA.¹⁰ However, the requester did not challenge the inmate pay provisions as applied by the IPC at his institution.¹¹ He challenged section 51120.7 of the DOM which has statewide application.¹² The Department acknowledges the statewide application of section 51120.7 in its statement: “The Department contends that the policy affects inmates at CSATF/SP individually, *as well as inmates at other institutions/*

⁹ Department’s “Response to Request for Determination,” September 26, 2001, p. 1.

¹⁰ Penal Code section 5058, subdivision (c) declares in part as follows:

“(c) The following are deemed not to be ‘regulations’ as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

(A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public. . . . ”

¹¹ Although the requester’s main concern seems to be the alleged failure of his prison’s IPC to follow section 51120.7, he requested OAL to issue a determination as to whether DOM section 51120.7 is a “regulation” as defined in Government Code section 11342.600, and thus, should be adopted pursuant to the APA.

¹² The DOM has statewide applicability. DOM section 12010.6, titled “Department Operations Manual,” states, in part, the following: “[The] DOM contains policy and procedures for uniform operation of the Department and *is issued statewide to inform staff of the approved procedures for program operations.*” (Emphasis added.) Additionally, DOM section 51120.2 states the purpose of the entire section 51120, which encompasses section 51120.7 and is titled “Inmate Pay,” as “This procedure establishes guidelines for uniform interpretation, application, and administration of inmate pay plans.”

⁷ Penal Code section 2700 provides:

“The Department of Corrections shall require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Director of Corrections.

“Whenever by any statute a price is required to be fixed for any services to be performed in connection with the work program of the Department of Corrections, the compensation paid to prisoners shall be included as an item of cost in fixing the final statutory price.

“Prisoners not engaged on work programs under the jurisdiction of the Prison Industry Authority, but who are engaged in productive labor outside of such programs may be compensated in like manner. The compensation of such prisoners shall be paid either out of funds appropriated by the Legislature for that purpose or out of such other funds available to the Department of Corrections for expenditure, as the Director of Finance may direct. . . . ”

⁸ Department’s “Response to Request for Determination,” September 26, 2001, p. 1.

facilities. . . .”¹³ (Emphasis added.) The Department also provides the following statement: “The word ‘shall’ in this specific DOM section [51120.7] *directs the individual Wardens or ‘facility officials’ to follow procedures in the DOM and their own local institutional procedures.*”¹⁴ (Emphasis added.)

In *In re Carlos Tomas Garcia on Habeas Corpus* (1998) 67 Cal.App.4th 841, 79 Cal.Rptr.2d 357, the court distinguished between the proposed statewide rule which concerned mail among inmates system-wide and the legitimate *local* rule, which related only to the Donovan facility and was upheld by the court as a “local rule” that was exempt from the APA. (67 Cal.App.4th 845–6, 79 Cal.Rptr.2d 359–360.)

The situation here, however, is not the same as that in *Garcia*. In this instance, the challenged DOM section 51120.7 directs the director’s designees at each facility statewide to adopt pay schedules and perform other duties concerning inmate pay. DOM section 51120.7 establishes “approved job classifications and pay rates which *shall be used in facility and parole inmate pay plans.*” Additionally, DOM section 51120.8 provides the following: “Inmate pay positions have been established and *shall be used in facility support and CCC operations. All inmate pay positions shall be assigned to one of [the job classifications set forth in section 51120.7]* based on position description [in section 51120.8]” Mr. Branson did not challenge the particular pay schedule at his facility (i.e., the application of the DOM section by his

facility’s IPC). Rather, he argues that the challenged DOM section 51120.7 pay schedule should be adopted pursuant to the APA because it applies to all facilities. DOM section 51120.7 is a rule of general application directed to the management of each facility and its inmate pay committee, and it affects inmates employed by the Department at the individual institutions and facilities. It is not a rule that applies only to one particular facility.

After reviewing the APA exemption discussed above, as well as all other potentially applicable APA exemptions, OAL finds that no express statutory exemption from the APA applies with respect to the pay schedule as set forth in DOM section 51120.7.

Thus, we conclude that the inmate pay schedule contained in DOM section 51120.7 constitutes a “regulation” which is required to be adopted pursuant to the APA.

DATE: May 23, 2002

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¹³. Department’s “Response to Request for Determination,” September 26, 2001, p. 2.

¹⁴. *Id.*

